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**Measures to eliminate international terrorism**

# Measures to eliminate international terrorism

## Report of the Working Group

*Chairman*: Mr. Philippe **Kirsch** (Canada)

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# I. Introduction

1. The General Assembly, in its resolution 53/108 of 8 December 1998, *inter alia*, decided that the Ad Hoc Committee established pursuant to resolution 51/210 of 17 December 1996 should hold its third session from 15 to 26 March 1999, devoting appropriate time to the consideration of the outstanding issues relating to the elaboration of a draft international convention for the suppression of acts of nuclear terrorism, and should initiate the elaboration of a draft international convention for the suppression of terrorist financing. It further recommended that the work should continue during the fifty-fourth session of the General Assembly, from 27 September to 8 October 1999, within the framework of a working group of the Sixth Committee.

2. Accordingly, the Sixth Committee, at its 2nd meeting, on 27 September 1999, established such a Working Group and elected Mr. Philippe Kirsch (Canada) as its Chairman.

3. The Sixth Committee also decided, at its 2nd meeting, to open the Working Group to all States Members of the United Nations or members of the specialized agencies or of the International Atomic Energy Agency (IAEA). At its 1st meeting, on 27 September 1999, the Working Group decided to invite the representatives of IAEA, as well as representatives of the International Committee of the Red Cross (ICRC) and the International Criminal Police Organization (Interpol) to participate in its discussions. At its 5th meeting, on 29 September 1999, the Working Group decided to allow the Asian-African Legal Consultative Committee (AALCC) to participate as an observer in the work of the Working Group.

4. The Working Group held 11 meetings, from 27 September to 8 October 1999.

5. The Working Group had before it the report of the Working Group of the Sixth Committee (A/C.6/53/L.4), wherein a revised text of the draft convention on the suppression of acts of nuclear terrorism prepared by the Friends of the Chairman was presented (annex I), as well as the report of the Ad Hoc Committee on the work of its third session,[1] containing, *inter alia*, a discussion paper submitted by the Bureau of the Ad Hoc Committee on articles 3 to 25[2] and a working paper prepared by France on articles 1 and 2 of the draft international convention for the suppression of the financing of terrorism.[3]

6. The Working Group also had before it oral and written proposals submitted during its meetings. The texts of the written proposals are contained in annex II to the present report.

7. A request was made to circulate the comments by the United Nations High Commissioner for Refugees in relation to article 2 of the draft convention,[4] for the information of delegations.

8. The Working Group paid tribute to its Chairman, Mr. Philippe Kirsch (Canada), for his contribution to the codification and progressive development of international law in the area of suppression of international terrorism, as well as in other important fields.

# II. Proceedings of the Working Group

## A. Elaboration of the draft international convention for the suppression of acts of nuclear terrorism

9. At its 1st meeting, on 27 September 1999, the Chairman of the Working Group stated that while some consultations had been held on the draft convention for the suppression of acts of nuclear terrorism prior to the Working Group, broader consultations were required to find an acceptable solution to the remaining issues concerning the scope of the Convention. He indicated that he would give as much time as necessary to those consultations during the session of the Working Group.

10. At its 11th meeting, on 8 October 1999, the Chairman informed the Working Group that a number of delegates had held discussions, on an individual basis, on the question of the draft convention during the session. While there appeared to be a willingness among delegations to continue work on the convention, it was determined that the time was not opportune for the convening of informal consultations during the Working Group.

11. The Chairman indicated that he remained convinced, as did the Friends of the Chairman, that a solution to the question of the convention for the suppression of acts of nuclear terrorism could be found if the political will existed. To that end, he appointed Ms. Cate Steains (Australia) to act as coordinator on the issue, with a view to organizing open-ended informal consultations at the appropriate time to develop such a solution. The Chairman further stated that, since the Working Group's session was concluding, he intended to consult with the Chairman of the Sixth Committee and would recommend that Ms. Steains report to the Chairman of the Sixth Committee on the outcome of her efforts.

12. The coordinator for the draft convention noted that a number of informal discussions had taken place in the period

following the last session of the Sixth Committee in an attempt to move the process forward, including efforts by a small group of delegates to prepare an informal discussion paper containing two new proposals, which had been made available to the delegations at the 11th meeting of the Working Group. It was observed that, while the paper had no higher status than other proposals on the topic, it was built on the earlier proposals and could make a valuable contribution to the work on the draft convention. The coordinator invited the delegations to provide her with their comments as soon as possible, preferably by the end of October 1999, and to submit any other proposals which would help delegations reach an acceptable compromise.

13. In terms of process, the coordinator believed it useful, initially, to conduct bilateral consultations on as wide a basis as possible with interested delegations. She indicated that she would be at the disposal of any delegations to discuss the issue either individually or in small groups. Following those bilateral consultations, the coordinator would propose to convene open-ended informal consultations as soon as possible during the current session of the Sixth Committee, and to report to the Chairman of the Sixth Committee on their outcome. She acknowledged that there was an enormous task ahead to resolve the outstanding issue of the draft convention, but felt confident that if delegations were to intensify their efforts and worked together constructively towards that end, they would be in a position to adopt a text that would be acceptable to all delegations.

### B. Elaboration of the draft international convention for the suppression of the financing of terrorism

14. Discussions were held both in the Working Group and in informal consultations. On the basis of those discussions as well as written or oral proposals and amendments submitted to the Working Group, a new discussion paper on articles 5, 7, 8, 12 and 17 was prepared by the Friends of the Chairman for consideration by the Working Group (A/C.6/54/WG.1/CRP.15), which was further revised by the Friends of the Chairman during the session of the Working Group (A/C.6/54/WG.1/CRP.15/Rev.1, 2 and 3). A revised text of article 1 was also submitted by the coordinator of the informal consultations (A/C.6/54/WG.1/CRP.32). A revised text of article 2 was orally introduced by the coordinator of the informal consultations at the 10th meeting of the Working Group. A discussion paper on the preamble (A/C.6/54/WG.1/CRP.30) and its revision (A/C.6/54/WG.1/CRP.30/Rev.1) were submitted by the delegation of France.

15. Following the discussions of those revised texts of draft articles, and taking into account the comments by delegations on those texts, the Friends of the Chairman prepared a revised text of the draft convention (A/C.6/54/WG.1/CRP.35 and CRP.35/Rev.1) (see annex I to the present report). The text contained in document A/C.6/54/WG.1/CRP.35/Rev.1 was orally amended at the 11th meeting of the Working Group in respect of article 7, paragraph 6 (see annex III, para. 205).

16. At the 11th meeting of the Working Group, the Chairman made a statement regarding the term "armed conflict" contained in article 2, paragraph 1 (b), of the draft convention (ibid., para. 109).

17. Annex III to the present report contains an informal summary of the discussions in the Working Group prepared by the Chairman for reference purposes only and not as a record of the discussions.

## III. Recommendations of the Working Group

18. At its 11th meeting, the Working Group decided to submit the draft international convention for the suppression of the financing of terrorism, contained in annex I to the present report, to the Sixth Committee for discussion and consideration. The Sixth Committee may wish to subsequently submit the draft convention to the General Assembly with a view to its adoption.

19. Also at its 11th meeting, the Working Group decided to recommend that the coordinator for the draft international convention for the suppression of acts of nuclear terrorism consult with the Chairman and Bureau of the Sixth Committee on the organization of consultations on the draft convention and report to the Chairman of the Sixth Committee on the outcome of those consultations.

*Notes*

[1] *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 37* (A/54/37).

[2] Ibid., annex I.A.

[3] Ibid., annex I.B.

# Annex I

## Revised text prepared by the Friends of the Chairman

### Preamble

*The States Parties to this Convention,*

*Bearing in mind* the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of good-neighbourliness and friendly relations and cooperation among States,

*Deeply concerned* about the worldwide escalation of acts of terrorism in all its forms and manifestations,

*Recalling* the Declaration on the Occasion of the Fiftieth Anniversary of the United Nations, contained in General Assembly resolution 50/6 of 24 October 1995,

*Recalling also* all the relevant General Assembly resolutions on the matter, including resolution 49/60 of 9 December 1994 and its annex on the Declaration on Measures to Eliminate International Terrorism, in which the States Members of the United Nations solemnly reaffirmed their unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomever committed, including those which jeopardize the friendly relations among States and peoples and threaten the territorial integrity and security of States,

*Noting* that the Declaration on Measures to Eliminate International Terrorism also encouraged States to review urgently the scope of the existing international legal provisions on the prevention, repression and elimination of terrorism in all its forms and manifestations, with the aim of ensuring that there is a comprehensive legal framework covering all aspects of the matter,

*Recalling* General Assembly resolution 51/210 of 17 December 1996, paragraph 3, subparagraph (f), in which the Assembly called upon all States to take steps to prevent and counteract, through appropriate domestic measures, the financing of terrorists and terrorist organizations, whether such financing is direct or indirect through organizations which also have or claim to have charitable, social or cultural goals or which are also engaged in unlawful activities such as illicit arms trafficking, drug dealing and racketeering, including the exploitation of persons for purposes of funding terrorist activities, and in particular to consider, where appropriate, adopting regulatory measures to prevent and counteract movements of funds suspected to be intended for terrorist purposes without impeding in any way the freedom of legitimate capital movements and to intensify the exchange of information concerning international movements of such funds,

*Recalling also* General Assembly resolution 52/165 of 15 December 1997, in which the Assembly called upon States to consider, in particular, the implementation of the measures set out in paragraphs 3 (a) to (f) of its resolution 51/210 of 17 December 1996,

*Recalling further* General Assembly resolution 53/108 of 8 December 1998, in which the Assembly decided that the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996 should elaborate a draft international convention for the suppression of terrorist financing to supplement related existing international instruments,

*Considering* that the financing of terrorism is a matter of grave concern to the international community as a whole,

*Noting* that the number and seriousness of acts of international terrorism depend on the financing that terrorists may obtain,

*Noting also* that existing multilateral legal instruments do not expressly address such financing,

*Being convinced* of the urgent need to enhance international cooperation among States in devising and adopting effective measures for the prevention of the financing of terrorism, as well as for its suppression through the prosecution and punishment of its perpetrators,

*Have agreed as follows*:

## Article 1

For the purposes of this Convention:

1. "Funds" means assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit.

2. "A State or governmental facility" means any permanent or temporary facility or conveyance that is used or occupied by representatives of a State, members of Government, the legislature or the judiciary or by officials or employees of a State or any other public authority or entity or by employees or officials of an intergovernmental organization in connection with their official duties.

3. "Proceeds" means any funds derived from or obtained, directly or indirectly, through the commission of an offence set forth in article 2.

## Article 2

1. Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:

(a) An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex; or

(b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.

2. (a) On depositing its instrument of ratification, acceptance, approval or accession, a State Party which is not a party to a treaty listed in the annex may declare that, in the application of this Convention to the State Party, the treaty shall be deemed not to be included in the annex referred to in paragraph 1, subparagraph (a). The declaration shall cease to have effect as soon as the treaty enters into force for the State Party, which shall notify the depositary of this fact;

(b) When a State Party ceases to be a party to a treaty listed in the annex, it may make a declaration as provided for in this article, with respect to that treaty.

3. For an act to constitute an offence set forth in paragraph 1, it shall not be necessary that the funds were actually used to carry out an offence referred to in paragraph 1, subparagraphs (a) or (b).

4. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of this article.

5. Any person also commits an offence if that person:

(a) Participates as an accomplice in an offence as set forth in paragraph 1 or 4 of this article;

(b) Organizes or directs others to commit an offence as set forth in paragraph 1 or 4 of this article;

(c) Contributes to the commission of one or more offences as set forth in paragraphs 1 or 4 of this article by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:

(i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offence as set forth in paragraph 1 of this article; or

(ii) Be made in the knowledge of the intention of the group to commit an offence as set forth in paragraph 1 of this article.

## Article 3

This Convention shall not apply where the offence is committed within a single State, the alleged offender is a national of that State and is present in the territory of that State and no other State has a basis under article 7, paragraph 1, or article 7, paragraph 2, to exercise jurisdiction, except that the provisions of articles 12 to 18 shall, as appropriate, apply in those cases.

## Article 4

Each State Party shall adopt such measures as may be necessary:

(a) To establish as criminal offences under its domestic law the offences set forth in article 2;

(b) To make those offences punishable by appropriate penalties which take into account the grave nature of the offences.

## Article 5

1. Each State Party, in accordance with its domestic legal principles, shall take the necessary measures to enable a legal entity located in its territory or organized under its laws to be held liable when a person responsible for the management or control of that legal entity has, in that capacity, committed an offence set forth in article 2. Such liability may be criminal, civil or administrative.

2. Such liability is incurred without prejudice to the criminal liability of individuals having committed the offences.

3. Each State Party shall ensure, in particular, that legal entities liable in accordance with paragraph 1 above are subject to effective, proportionate and dissuasive criminal, civil or administrative sanctions. Such sanctions may include monetary sanctions.

## Article 6

Each State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

## Article 7

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 when:

(a) The offence is committed in the territory of that State;

(b) The offence is committed on board a vessel flying the flag of that State or an aircraft registered under the laws of that State at the time the offence is committed;

(c) The offence is committed by a national of that State.

2. A State Party may also establish its jurisdiction over any such offence when:

(a) The offence was directed towards or resulted in the carrying out of an offence referred to in article 2, paragraph 1, subparagraph (a) or (b), in the territory of or against a national of that State;

(b) The offence was directed towards or resulted in the carrying out of an offence referred to in article 2, paragraph 1, subparagraph (a) or (b), against a State or government facility of that State abroad, including diplomatic or consular premises of that State;

(c) The offence was directed towards or resulted in an offence referred to in article 2, paragraph 1, subparagraph (a) or (b), committed in an attempt to compel that State to do or abstain from doing any act;

(d) The offence is committed by a stateless person who has his or her habitual residence in the territory of that State;

(e) The offence is committed on board an aircraft which is operated by the Government of that State.

3. Upon ratifying, accepting, approving or acceding to this Convention, each State Party shall notify the Secretary-General of the United Nations of the jurisdiction it has established in accordance with paragraph 2. Should any change take place, the State Party concerned shall immediately notify the Secretary-General.

4. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 in cases where the alleged offender is present in its territory and it does not extradite that person to any of the States Parties that have established their jurisdiction in accordance with paragraphs 1 or 2.

5. When more than one State Party claims jurisdiction over the offences set forth in article 2, the relevant States Parties shall strive to coordinate their actions appropriately, in particular concerning the conditions for prosecution and the modalities for mutual legal assistance.

6. Without prejudice to the norms of general international law, this Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

## Article 8

1. Each State Party shall take appropriate measures, in accordance with its domestic legal principles, for the identification, detection and freezing or seizure of any funds used or allocated for the purpose of committing the offences set forth in article 2 as well as the proceeds derived from such offences, for purposes of possible forfeiture.

2. Each State Party shall take appropriate measures, in accordance with its domestic legal principles, for the forfeiture of funds used or allocated for the purpose of committing the offences set forth in article 2 and the proceeds derived from such offences.

3. Each State Party concerned may give consideration to concluding agreements on the sharing with other States Parties, on a regular or case-by-case basis, of the funds derived from the forfeitures referred to in this article.

4. Each State Party shall consider establishing mechanisms whereby the funds derived from the forfeitures referred to in this article are utilized to compensate the victims of offences referred to in article 2, paragraph 1, subparagraph (a) or (b), or their families.

5. The provisions of this article shall be implemented without prejudice to the rights of third parties acting in good faith.

## Article 9

1. Upon receiving information that a person who has committed or who is alleged to have committed an offence set forth in article 2 may be present in its territory, the State Party concerned shall take such measures as may be necessary under its domestic law to investigate the facts contained in the information.

2. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the offender or alleged offender is present shall take the appropriate measures under its domestic law so as to ensure that person's presence for the purpose of prosecution or extradition.

3. Any person regarding whom the measures referred to in paragraph 2 are being taken shall be entitled to:

(a) Communicate without delay with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled to protect that person's rights or, if that person is a stateless person, the State in the territory of which that person habitually resides;

(b) Be visited by a representative of that State;

(c) Be informed of that person's rights under subparagraphs (a) and (b).

4. The rights referred to in paragraph 3 shall be exercised in conformity with the laws and regulations of the State in the territory of which the offender or alleged offender is present, subject to the provision that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 are intended.

5. The provisions of paragraphs 3 and 4 shall be without prejudice to the right of any State Party having a claim to jurisdiction in accordance with article 7, paragraph 1, subparagraph (b), or paragraph 2, subparagraph (b), to invite the International Committee of the Red Cross to communicate with and visit the alleged offender.

6. When a State Party, pursuant to the present article, has taken a person into custody, it shall immediately notify, directly or through the Secretary-General of the United Nations, the States Parties which have established jurisdiction in accordance with article 7, paragraph 1 or 2, and, if it considers it advisable, any other interested States Parties, of the fact that such person is in custody and of the circumstances which warrant that person's detention. The State which makes the investigation contemplated in paragraph 1 shall promptly inform the said States Parties of its findings and shall indicate whether it intends to exercise jurisdiction.

## Article 10

1. The State Party in the territory of which the alleged offender is present shall, in cases to which article 7 applies, if it does not extradite that person, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without undue delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.

2. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State to serve the sentence imposed as a result of the trial or proceeding for which the extradition or surrender of the person was sought, and this State and the State seeking the extradition of the person agree with this option and other terms they may deem appropriate, such a conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 1.

## Article 11

1. The offences set forth in article 2 shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties before the entry into force of this Convention. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be subsequently concluded between them.

2. When a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State Party may, at its option, consider this Convention as a legal basis for extradition in respect of the offences set forth in article 2. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in article 2 as extraditable offences between themselves, subject to the conditions provided by the law of the requested State.

4. If necessary, the offences set forth in article 2 shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territory of the States that have established jurisdiction in accordance with article 7, paragraphs 1 and 2.

5. The provisions of all extradition treaties and arrangements between States Parties with regard to offences set forth in article 2 shall be deemed to be modified as between States Parties to the extent that they are incompatible with this Convention.

## Article 12

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal investigations or criminal or extradition proceedings in respect of the offences set forth in article 2, including assistance in obtaining evidence in their possession necessary for the proceedings.

2. States Parties may not refuse a request for mutual legal assistance on the ground of bank secrecy.

3. The requesting Party shall not transmit nor use information or evidence furnished by the requested Party for investigations, prosecutions or proceedings other than those stated in the request without the prior consent of the requested Party.

4. Each State Party may give consideration to establishing mechanisms to share with other State Parties information or evidence needed to establish criminal, civil or administrative liability pursuant to article 5.

5. States Parties shall carry out their obligations under paragraphs 1 and 2 in conformity with any treaties or other arrangements on mutual legal assistance or information exchange that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

## Article 13

None of the offences set forth in article 2 shall be regarded, for the purposes of extradition or mutual legal assistance, as a fiscal offence. Accordingly, States Parties may not refuse a request for extradition or for mutual legal assistance on the sole ground that it concerns a fiscal offence.

## Article 14

None of the offences set forth in article 2 shall be regarded for the purposes of extradition or mutual legal assistance as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

## Article 15

Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance, if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in article 2 or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person's position for any of these reasons.

## Article 16

1. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for the investigation or prosecution of offences set forth in article 2 may be transferred if the following conditions are met:

(a) The person freely gives his or her informed consent;

(b) The competent authorities of both States agree, subject to such conditions as those States may deem appropriate.

2. For the purposes of the present article:

(a) The State to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State from which the person was transferred;

(b) The State to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States;

(c) The State to which the person is transferred shall not require the State from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State to which he or she was transferred.

3. Unless the State Party from which a person is to be transferred in accordance with the present article so agrees, that person, whatever his or her nationality, shall not be prosecuted or detained or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts or convictions anterior to his or her departure from the territory of the State from which such person was transferred.

## Article 17

Any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to this Convention shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in

the territory of which that person is present and applicable provisions of international law, including international human rights law.

## Article 18

1. States Parties shall cooperate in the prevention of the offences set forth in article 2 by taking all practicable measures, *inter alia*, by adapting their domestic legislation, if necessary, to prevent and counter preparations in their respective territories for the commission of those offences within or outside their territories, including:

(a) Measures to prohibit in their territories illegal activities of persons and organizations that knowingly encourage, instigate, organize or engage in the commission of offences set forth in article 2;

(b) Measures requiring financial institutions and other professions involved in financial transactions to utilize the most efficient measures available for the identification of their usual or occasional customers, as well as customers in whose interest accounts are opened, and to pay special attention to unusual or suspicious transactions and report transactions suspected of stemming from a criminal activity. For this purpose, States Parties shall consider:

(i) Adopting regulations prohibiting the opening of accounts the holders or beneficiaries of which are unidentified or unidentifiable, and measures to ensure that such institutions verify the identity of the real owners of such transactions;

(ii) With respect to the identification of legal entities, requiring financial institutions, when necessary, to take measures to verify the legal existence and the structure of the customer by obtaining, either from a public register or from the customer or both, proof of incorporation, including information concerning the customer's name, legal form, address, directors and provisions regulating the power to bind the entity;

(iii) Adopting regulations imposing on financial institutions the obligation to report promptly to the competent authorities all complex, unusual large transactions and unusual patterns of transactions, which have no apparent economic or obviously lawful purpose, without fear of assuming criminal or civil liability for breach of any restriction on disclosure of information if they report their suspicions in good faith;

(iv) Requiring financial institutions to maintain, for at least five years, all necessary records on transactions, both domestic or international.

2. States Parties shall further cooperate in the prevention of offences set forth in article 2 by considering:

(a) Measures for the supervision, including, for example, the licensing, of all money-transmission agencies;

(b) Feasible measures to detect or monitor the physical cross-border transportation of cash and bearer negotiable instruments, subject to strict safeguards to ensure proper use of information and without impeding in any way the freedom of capital movements.

3. States Parties shall further cooperate in the prevention of the offences set forth in article 2 by exchanging accurate and verified information in accordance with their domestic law and coordinating administrative and other measures taken, as appropriate, to prevent the commission of offences set forth in article 2, in particular by:

(a) Establishing and maintaining channels of communication between their competent agencies and services to facilitate the secure and rapid exchange of information concerning all aspects of offences set forth in article 2;

(b) Cooperating with one another in conducting inquiries, with respect to the offences set forth in article 2, concerning:

(i) The identity, whereabouts and activities of persons in respect of whom reasonable suspicion exists that they are involved in such offences;

(ii) The movement of funds relating to the commission of such offences.

4. States Parties may exchange information through the International Criminal Police Organization (Interpol).

## Article 19

The State Party where the alleged offender is prosecuted shall, in accordance with its domestic law or applicable procedures, communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to the other States Parties.

## Article 20

The States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

## Article 21

Nothing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes of the Charter of the United Nations, international humanitarian law and other relevant conventions.

## Article 22

Nothing in this Convention entitles a State Party to undertake in the territory of another State Party the exercise of jurisdiction or performance of functions which are exclusively reserved for the authorities of that other State Party by its domestic law.

## Article 23

1. The annex may be amended by the addition of relevant treaties that:

(a) Are open to the participation of all States;

(b) Have entered into force;

(c) Have been ratified, accepted, approved or acceded to by at least twenty-two States Parties to the present Convention.

2. After the entry into force of this Convention, any State Party may propose such an amendment. Any proposal for an amendment shall be communicated to the depositary in written form. The depositary shall notify proposals that meet the requirements of paragraph 1 to all States Parties and seek their views on whether the proposed amendment should be adopted.

3. The proposed amendment shall be deemed adopted unless one third of the States Parties object to it by a written notification not later than 180 days after its circulation.

4. The adopted amendment to the annex shall enter into force 30 days after the deposit of the twenty-second instrument of ratification, acceptance or approval of such amendment for all those States Parties having deposited such an instrument. For each State Party ratifying, accepting or approving the amendment after the deposit of the twenty-second instrument, the amendment shall enter into force on the thirtieth day after deposit by such State Party of its instrument of ratification, acceptance or approval.

## Article 24

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation within a reasonable time shall, at the request of one of them, be submitted to arbitration. If, within six months from the date of the request for arbitration, the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice, by application, in conformity with the Statute of the Court.

2. Each State may at the time of signature, ratification, acceptance or approval of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1. The other States Parties shall not be bound by paragraph 1 with respect to any State Party which has made such a reservation.

3. Any State which has made a reservation in accordance with paragraph 2 may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

## Article 25

1. This Convention shall be open for signature by all States from ... until ... at United Nations Headquarters in New York.

2. This Convention is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

3. This Convention shall be open to accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

## Article 26

1. This Convention shall enter into force on the thirtieth day following the date of the deposit of the twenty-second instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations.

2. For each State ratifying, accepting, approving or acceding to the Convention after the deposit of the twenty-second instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification, acceptance, approval or accession.

## Article 27

1. Any State Party may denounce this Convention by written notification to the Secretary-General of the United Nations.

2. Denunciation shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations.

## Article 28

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations who shall send certified copies thereof to all States.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention, opened for signature at United Nations Headquarters in New York on .....

## Annex

1. Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970.

2. Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971.

3. Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973.

4. International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979.

5. Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980.

6. Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988.

7. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988.

8. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on 10 March 1988.

9. International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997.

# Annex II

## Discussion papers, written amendments and proposals submitted to the Working Group

| *Country* | *Symbol* | *Subject** |
|---|---|---|
| 1. Guatemala | A/C.6/54/WG.1/CRP.1 | Article 5, para. 1 |
| 2. Netherlands | A/C.6/54/WG.1/CRP.2 | Article 1, para. 1 |
| 3. Belgium | A/C.6/54/WG.1/CRP.3 | Article 2, para. 1 (b) |
| 4. Belgium | A/C.6/54/WG.1/CRP.4 | Article 19 *bis* [21] |
| 5. Guatemala | A/C.6/54/WG.1/CRP.5 | Article 1, paras. 1 and 3 |
| 6. Mexico | A/C.6/54/WG.1/CRP.6 | Article 1 |
| 7. Republic of Korea | A/C.6/54/WG.1/CRP.7 | Article 2, para. 1 (a) |
| 8. Japan | A/C.6/54/WG.1/CRP.8 | Article 8, para. 6 |
| 9. France | A/C.6/54/WG.1/CRP.9 | Article 1 |
| 10. Mexico | A/C.6/54/WG.1/CRP.10 | Article 2 |
| 11. United Kingdom of Great Britain and Northern Ireland | A/C.6/54/WG.1/CRP.11 | Article 20 *bis* [23] |
| 12. Austria | A/C.6/54/WG.1/CRP.12 | Article 2, para. 1 (a) |
| 13. Mexico | A/C.6/54/WG.1/CRP.13 | Article 17, 1 (b) [18] |
| 14. Costa Rica and Mexico | A/C.6/54/WG.1/CRP.14 | Article 2, 1 (b) |
| 15. Revised texts of articles 5, 7, 8, 12 and 17 prepared by the Friends of the Chairman | A/C.6/54/WG.1/CRP.15 | Articles 5, 7, 8, 12 and 17 [18] |
| 16. Revised texts of articles 5, 7, 8, 12 and 17 prepared by the Friends of the Chairman | A/C.6/54/WG.1/CRP.15/Rev.1 | Articles 5, 7, 8, 12 and 17 [18] |
| 17. Revised texts of articles 5, 7, 8, 12 and 17 prepared by the Friends of the Chairman | A/C.6/54/WG.1/CRP.15/Rev.2 | Articles 5, 7, 8, 12 and 17 [18] |
| 18. Revised texts of articles 5, 7, 8, 12 and 17 prepared by the Friends of the Chairman | A/C.6/54/WG.1/CRP.15/Rev.3 | Articles 5, 7, 8, 12 and 17 [18] |
| 19. United Kingdom of Great Britain and Northern Ireland | A/C.6/54/WG.1/CRP.16 | Articles 1 and 2 |
| 20. Guatemala | A/C.6/54/WG.1/CRP.17 | Article 8, para. 4 |
| 21. United Kingdom of Great Britain and Northern Ireland | A/C.6/54/WG.1/CRP.18 | Article 2, para. 1 (a) |
| 22. Guatemala | A/C.6/54/WG.1/CRP.19 | Article 5 |
| 23. Guatemala | A/C.6/54/WG.1/CRP.20 | Article 20 *bis* [23], para. 1 |
| 24. Mexico | A/C.6/54/WG.1/CRP.21 | Article 5, para. 4 |
| 25. France | A/C.6/54/WG.1/CRP.22 | Article 17 [18] |
| 26. Syrian Arab Republic | A/C.6/54/WG.1/CRP.23 | Article 2 |
| 27. Syrian Arab Republic | A/C.6/54/WG.1/CRP.24 | Articles 5, 7 and 8 |
| 28. Brazil | A/C.6/54/WG.1/CRP.25 | Article 2, para. 1 |
| 29. Netherlands | A/C.6/54/WG.1/CRP.26 | Article 2 |
| 30. Colombia, Costa Rica and Mexico | A/C.6/54/WG.1/CRP.27 | Article 2 |
| 31. Mexico | A/C.6/54/WG.1/CRP.28 | Article 5, para. 3 |
| 32. Australia | A/C.6/54/WG.1/CRP.29 | Article 5 |
| 33. France | A/C.6/54/WG.1/CRP.30 | Preamble |

| *Country* | *Symbol* | *Subject*• |
|---|---|---|
| 34. France | A/C.6/54/WG.1/CRP.30/Rev.1 | Preamble |
| 35. Draft report of the Working Group | A/C.6/54/WG.1/CRP.31 and Add.1-12 | |
| 36. Revised discussion paper presented by the coordinator on article 1 | A/C.6/54/WG.1/CRP.32 | Article 1 |
| 37. India | A/C.6/54/WG.1/CRP.33 | Article 2, para. 1 (b) |
| 38. Pakistan and Syrian Arab Republic | A/C.6/54/WG.1/CRP.34 | Preamble |
| 39. Revised text prepared by the Friends of the Chairman | A/C.6/54/WG.1/CRP.35 | Preamble, articles 1, 3 to 25 [28] |
| 40. Revised text prepared by the Friends of the Chairman | A/C.6/54/WG.1/CRP.35/Rev.1 | Preamble, articles 1 to 28 |
| 41. Kuwait | A/C.6/54/WG.1/CRP.36 | Preamble, articles 1, 2, 4, 5, 7, 8, 17 [18] and Annex |

• Equivalent provisions contained in the articles in document A/C.6/54/WG.1/CRP.35/Rev.1 (see annex I) are indicated in square brackets.

## 1. Proposal submitted by Guatemala (A/C.6/54/WG.1/CRP.1)

**Article 5**

**Paragraph 1**

1. Each State Party, acting individually or, where necessary or appropriate, in cooperation with other States Parties, shall use all the means provided by the facts or circumstances of each case to ensure that legal entities may be held liable or sanctioned when they have, with the full knowledge of one or more persons responsible for their management or control, benefited from or committed offences set forth in article 2. The factors which each State Party shall take into account for such purposes shall include:

(a) That the activities of the legal entity are carried out in the territory of the State Party or that the legal entity owns or holds assets in that territory;

(b) That the legal entity has its registered offices in the territory of the State Party or, if not, that it is controlled from that territory;

(c) That the legal entity is constituted under the laws of the State Party or has its nationality.

*Explanatory comments*: The purpose of the proposed text is to strengthen, broaden and make more effective, to the extent possible, the obligation of States Parties to hold liable or sanction legal entities that commit offences under the Convention. It is felt that this text comes closer to fulfilling this purpose than the text contained in annex I, part A, of the report of the Ad Hoc Committee (A/54/37).

## 2. Proposal by the Netherlands (A/C.6/54/WG.1/CRP.2)

**Article 1**

**Paragraph 1**

Substitute [or acquisition] for [or reception]

*Explanation*:

"Acquisition" is a more active manner to obtain funds and the term furthermore avoids difficulties which delegations may have regarding the element of "reception" (in article 1, paragraph 1) in relation to the requirement of "knowledge" (in article 2, paragraph 1, *chapeau*).

## 3. Proposal submitted by Belgium (A/C.6/54/WG.1/CRP.3)

**Article 2**

**Paragraph 1 (b)**

Replace article 2, paragraph 1 (b), with the following text:

"A murder, when, in view of its context, it provokes terror in the population and is likely to intimidate a government".

## 4. Proposal submitted by Belgium (A/C.6/54/WG.1/CRP.4)

Add an article 19 *bis* [21]

"In case of armed conflict, as defined by international humanitarian law, acts governed by this law shall be excluded from the scope of application of the present Convention."

## 5. Proposal submitted by Guatemala (A/C.6/54/WG.1/CRP.5)

**Article 1**

*Paragraph 2*

Replace the second comma in the first line with a period and delete the remainder of the paragraph.

*Paragraph 3*

Replace all that follows the first comma in the second line with "and whether or not the group constitutes a legal entity".

## 6. Proposal submitted by Mexico (A/C.6/54/WG.1/CRP.6)

**Article 1**

1. Replace paragraph 3 by the following text:

   3. "Organization" means any group of persons united by ties of hierarchy or coordination, whatever their declared objectives, and legal entities such as companies, partnerships or associations.

2. Add a new paragraph 5, as follows:

   5. "Profit from the offence" means any advantage or benefit derived from the offences referred to in article 2, including resources, assets or entitlements of any kind.

3. Add a new paragraph 6, as follows:

   6. "Financial institution" means banking and non-banking entities, including financial or exchange brokers, which provide financial services.

## 7. Proposal by the Republic of Korea concerning article 2, paragraph 1 (a) (A/C.6/54/WG.1/CRP.7)

The delegation of the Republic of Korea proposes to replace the present wording of paragraph 1 (a) with the following:

*Option 1*:

(a) an offence within the scope of one of the Conventions listed in annex I to this Convention, subject to its ratification, acceptance, approval, or accession thereto by the State Party; or

*Option 2*:

(a) an offence specified in the treaties in annex I to this Convention, subject to its ratification, acceptance, approval, or accession thereto by the State Party; or

## 8. Proposal submitted by Japan (A/C.6/54/WG.1/CRP.8)

**Article 8**

**New paragraph 6**

Nothing contained in this article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic law of a State Party.

## 9. Proposal by France (A/C.6/54/WG.1/CRP.9)

**Article 1**

For the purposes of this Convention,

1. "Financing" means providing/making available or obtaining/accepting/receiving funds.[1]

2. "Funds" means assets/property of every kind, tangible or intangible, however acquired, including but not limited to cash, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit or any other negotiable instrument in any form, including electronic or digital form.[2]

3. "Organization" means any group of two or more persons, and any legal entity such as a company, a partnership, or an association.

4. "A State or government facility" means any permanent or temporary facility or conveyance that is issued or occupied by representatives of a State, members of Government, the legislature or the judiciary or by officials or employees of a State or any other public authority or entity or by employees or officials of an intergovernmental organization in connection with their official duties.[3]

## 10. Proposal submitted by Mexico (A/C.6/54/WG.1/CRP.10)

**Article 2**

Add one new paragraph to article 2, as follows:

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[1] A decision will have to be made on whether or not to maintain this paragraph.

[2] Alternative based on the Vienna Drugs Convention: "Funds means assets of every kind, whether tangible or intangible, movable or unmovable, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit."

[3] It has been proposed to move this definition to article 7.

5. The knowledge, intention or purpose required as elements of the offences established in this article shall be inferred from well-founded evidence or objective and actual circumstances.

## 11. Revised proposal submitted by the United Kingdom of Great Britain and Northern Ireland (A/C.6/54/WG.1/CRP.11)

**Article 20 *bis* [23]**

1. On depositing its instrument of ratification, acceptance or approval of, or accession to, this Convention, a State Party which is not a party to a treaty listed in the Annex may declare that, in the application of this Convention to that State Party, offences specified in that treaty shall not be treated as offences referred to in article 2, paragraph 1, subparagraph (a). Such declaration shall cease to have effect as soon as the treaty enters into force for that State Party, which shall notify the depositary of that fact, and the depositary shall so notify the other States Parties.

2. States Parties may propose the addition to the Annex of offences specified in another treaty even if the treaty is not yet in force. Once the depositary has received such a proposal from [22] States Parties, the Annex shall be deemed to have been so amended [90] days after the depositary has informed all States Parties that he has received [22] such proposals. However, a State Party which does not agree with the proposal may, before or during the said period of [90] days, declare that the addition shall not apply to that State Party. Such declaration shall cease to have effect as soon as the State Party notifies the depositary of this, and the depositary shall so notify the other States Parties.

3. All declarations and other communications concerning the Annex shall be made to or by the depositary and be in writing.

## 12. Proposal submitted by Austria (A/C.6/54/WG.1/CRP.12)

**Article 2**

**Paragraph 1 (a)**

An act which constitutes an offence within the scope of one of the Conventions listed in the Annex and as specified therein,[4] when such an act, by its nature or context, is capable of intimidating a Government or the civilian population.

## 13. Proposal submitted by Mexico (A/C.6/54/WG.1/CRP.13)

**Article 17**

Amend paragraph 1 (b) of article 17 to read as follows:

"(b) Measures requiring their financial institutions to make use of the most efficient measures to identify their usual or occasional customers, as well as customers

[4] For the text of the Annex, see the Austrian proposal contained in document A/AC.252/1999/WP.11 (*Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 37* (A/54/37), annex III, sect. 11).

in whose interest accounts are opened, and to report suspicious transactions. For this purpose, the States shall consider:

"(i) Adopting regulations prohibiting the opening of anonymous accounts whose owners or beneficiaries are not and cannot be identified, including anonymous accounts or accounts under obviously fictitious names, and measures to ensure that such institutions verify the real identity of the real owners of all transactions;

"(ii) ...

"(ii) *bis* Adopting regulations imposing on financial institutions the obligation to report to the competent authorities any unusual or suspicious transaction, as well as transactions exceeding a certain amount, without fear of assuming civil liability for having provided information in good faith;

"(iii) ..."

## 14. Proposal submitted by Costa Rica and Mexico (A/C.6/54/WG.1/CRP.14)

**Article 2**

1. Any person ...

(b) Acts intended to cause death or serious bodily harm to a person when such acts are committed with the intent to provoke terror in the population or to compel a legal person, an international organization or a State to commit or refrain from committing an act.

## 15. Revised texts of articles 5, 7, 8, 12 and 17 [18] prepared by the Friends of the Chairman (A/C.6/54/WG.1/CRP.15)

**Article 5**

1. Each State Party, in accordance with its domestic legal system, shall take the necessary measures to ensure that when a person responsible for the management or control of a legal entity located in its territory or organized under its laws has, in that capacity, committed an offence under article 2 of this Convention, that legal entity shall incur liability in accordance with the provisions of this article.

2. Such liability may be criminal, civil or administrative.

3. Such liability is incurred without prejudice to the criminal liability of individuals having committed the offences.

4. Each State Party shall ensure, in particular, that legal entities liable in accordance with paragraph 1 above are subject to effective and proportionate measures.

**Article 7**

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 when:

(a) The offence is committed in the territory of that State; or

(b) The offence is committed on board a vessel flying the flag of that State or an aircraft registered under the laws of that State at the time the offence is committed; or

(c) The offence is committed by a national of that State.

2. A State Party may also establish its jurisdiction over any such offence when:

(a) The offence was directed towards or resulted in the carrying out of an offence referred to in article 2, paragraph 1, subparagraph (a) or (b), in the territory of or against a national of that State; or

(b) The offence was directed towards or resulted in the carrying out of an offence referred to in article 2, paragraph 1, subparagraph (a) or (b), against a State or government facility of that State abroad, including diplomatic or consular premises of that State; or

(c) The offence was directed towards or resulted in an offence referred to in article 2, paragraph 1, subparagraph (a) or (b), committed in an attempt to compel that State to do or abstain from doing any act; or

(d) The offence is committed by a stateless person who has his or her habitual residence in the territory of that State; or

(e) The offence is committed on board an aircraft which is operated by the Government of that State.

3. Upon ratifying, accepting, approving or acceding to this Convention, each State Party shall notify the Secretary-General of the United Nations of the jurisdiction it has established in accordance with paragraph 2. Should any change take place, the State Party concerned shall immediately notify the Secretary-General.

4. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 in cases where the alleged offender is present in its territory and it does not extradite that person to any of the States Parties that have established their jurisdiction in accordance with paragraphs 1 or 2.

5. When more than one State Party claims jurisdiction over the offences set forth in article 2, the relevant States Parties shall strive to coordinate their actions appropriately, in particular concerning the conditions for prosecution and the modalities for mutual legal assistance.

6. This Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

**Article 8**

1. Each State Party shall take appropriate measures for the identification, detection and freezing or seizure of any property, funds or other means used or intended to be used in any manner in order to commit the offences set forth in article 2 as well as the proceeds derived from such offences, for purposes of possible forfeiture.

2. Each State Party shall take appropriate measures for the forfeiture of property, funds and other means used or intended to be used for committing the offences set forth in article 2 and the proceeds derived from such offences.

3. Each State Party may give consideration to concluding agreements on the sharing with other States Parties, on a regular or case-by-case basis, of such proceeds or property, or funds derived from the sale of such proceeds or property.

4. Each State Party shall consider establishing mechanisms whereby the funds derived from the forfeitures referred to in this article are utilized to compensate the victims of offences referred to in article 2, paragraph 1, subparagraph (a) or (b), or their families.

5. The provisions of this article shall be implemented without prejudice to the rights of third parties acting in good faith.

**Article 12**

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal investigations or criminal or extradition proceedings in respect of the offences set forth in article 2, including assistance in obtaining evidence in their possession necessary for the proceedings.

2. States Parties may not refuse a request for mutual legal assistance on the ground of bank secrecy.

2 *bis*. The requesting Party shall not transmit nor use information or evidence furnished by the requested Party for investigations, prosecutions or proceedings other than those stated in the request without the prior consent of the requested Party.

2 *ter*. Each State Party may give consideration to establishing mechanisms to share with other State Parties information or evidence needed to establish civil or administrative liability pursuant to article 5.

3. States Parties shall carry out their obligations under paragraphs 1 and 2 in conformity with any treaties or other arrangements on mutual legal assistance or information exchange that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

**Article 12 *bis* [13]**

None of the offences set forth in article 2 shall be regarded, for the purposes of extradition or mutual legal assistance, as a fiscal offence. Accordingly, States Parties may not refuse a request for extradition or for mutual legal assistance on the sole ground that it concerns a fiscal offence.

**Article 17 [18]**

States Parties shall cooperate in the prevention of the offences set forth in article 2, including by:

1. Taking all practicable measures, including, if necessary, adapting their domestic legislation, to prevent and counter preparations in their respective territories for the commission of those offences within or outside their territories, including:

(a) Measures to prohibit in their territories illegal activities of persons and organizations that knowingly encourage, instigate, organize or engage in the commission of offences set forth in article 2;

(b) Measures requiring financial institutions and other professions involved in financial transactions to utilize the most efficient measures available for the identification of their usual or occasional customers, as well as customers in whose interest accounts are opened. For this purpose, States shall consider:

(i) Adopting regulations prohibiting the opening of accounts whose holder or beneficiary is unidentified or unidentifiable;

(ii) With respect to the identification of legal entities, requiring financial institutions, when necessary, to take measures to verify the legal existence and the structure of the customer by obtaining, either from a public register or from the customer or both,

proof of incorporation, including information concerning the customer's name, legal form, address, directors and provisions regulating the power to bind the entity;

(iii) Requiring financial institutions to maintain, for at least five years, all necessary records on transactions, both domestic or international;

(c) Measures for the supervision and licensing of all money-transmission agencies;

(d) Implementation of feasible measures to detect or monitor the physical cross-border transport of cash and bearer negotiable instruments, subject to strict safeguards to ensure proper use of information and without impeding in any way the freedom of capital movements.

2. Exchanging accurate and verified information in accordance with their domestic law and coordinating administrative and other measures taken, as appropriate, to prevent the commission of offences set forth in article 2, in particular, by:

(a) Establishing and maintaining channels of communication between their competent agencies and services to facilitate the secure and rapid exchange of information concerning all aspects of offences set forth in article 2;

(b) Cooperating with one another in conducting inquiries, with respect to the offences set forth in article 2, concerning:

(i) The identity, whereabouts and activities of persons in respect of whom reasonable suspicion exists that they are involved in such offences;

(ii) The movement of funds or property relating to the commission of such offences.

## 16. Revised texts of articles 5, 7, 8, 12 and 17 [18] prepared by the Friends of the Chairman (A/C.6/54/WG.1/CRP.15/Rev.1)

### Article 5

1. Each State Party, in accordance with its domestic legal system, shall take the necessary measures to ensure that when a person responsible for the management or control of a legal entity located in its territory or organized under its laws has, in that capacity, or on its behalf, committed an offence set forth in article 2, a legal entity may be held liable in accordance with the provisions of this article. Such liability may be criminal, civil or administrative.

2. Such liability is incurred without prejudice to the criminal liability of individuals having committed the offences.

3. Each State Party shall ensure, in particular, that legal entities liable in accordance with paragraph 1 above are subject to effective and proportionate measures.

### Article 7

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 when:

(a) The offence is committed in the territory of that State; or

(b) The offence is committed on board a vessel flying the flag of that State or an aircraft registered under the laws of that State at the time the offence is committed; or

(c) The offence is committed by a national of that State.

2. A State Party may also establish its jurisdiction over any such offence when:

(a) The offence was directed towards or resulted in the carrying out of an offence referred to in article 2, paragraph 1, subparagraph (a) or (b), in the territory of or against a national of that State; or

(b) The offence was directed towards or resulted in the carrying out of an offence referred to in article 2, paragraph 1, subparagraph (a) or (b), against a State or government facility of that State abroad, including diplomatic or consular premises of that State; or

(c) The offence was directed towards or resulted in an offence referred to in article 2, paragraph 1, subparagraph (a) or (b), committed in an attempt to compel that State to do or abstain from doing any act; or

(d) The offence is committed by a stateless person who has his or her habitual residence in the territory of that State; or

(e) The offence is committed on board an aircraft which is operated by the Government of that State.

3. Upon ratifying, accepting, approving or acceding to this Convention, each State Party shall notify the Secretary-General of the United Nations of the jurisdiction it has established in accordance with paragraph 2. Should any change take place, the State Party concerned shall immediately notify the Secretary-General.

4. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 in cases where the alleged offender is present in its territory and it does not extradite that person to any of the States Parties that have established their jurisdiction in accordance with paragraphs 1 or 2.

5. When more than one State Party claims jurisdiction over the offences set forth in article 2, the relevant States Parties shall strive to coordinate their actions appropriately, in particular concerning the conditions for prosecution and the modalities for mutual legal assistance.

6. This Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

**Article 8**

1. Each State Party shall take appropriate measures, in accordance with its domestic legal principles, for the identification, detection and freezing or seizure of any property, funds or other means used or intended to be used in any manner in order to commit the offences set forth in article 2 as well as the proceeds derived from such offences, for purposes of possible forfeiture.

2. Each State Party shall take appropriate measures, in accordance with its domestic legal principles, for the forfeiture of property, funds and other means used or intended to be used for committing the offences set forth in article 2 and the proceeds derived from such offences.

3. Each State Party concerned may give consideration to concluding agreements on the sharing with other States Parties, on a regular or case-by-case basis, of such proceeds or property, or funds derived from the sale of such proceeds or property.

4. Each State Party shall consider establishing mechanisms whereby the funds derived from the forfeitures referred to in this article are utilized to compensate the victims of offences referred to in article 2, paragraph 1, subparagraph (a) or (b), or their families.

5. The provisions of this article shall be implemented without prejudice to the rights of third parties acting in good faith.

*Proposed definition*

"Proceeds"means any property or other type of profit derived from or obtained, directly or indirectly, through the commission of an offence established in accordance with article 2, paragraph 1.

**Article 12**

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal investigations or criminal or extradition proceedings in respect of the offences set forth in article 2, including assistance in obtaining evidence in their possession necessary for the proceedings.

2. States Parties may not refuse a request for mutual legal assistance on the ground of bank secrecy.

2 *bis*. The requesting Party shall not transmit nor use information or evidence furnished by the requested Party for investigations, prosecutions or proceedings other than those stated in the request without the prior consent of the requested Party.

2 *ter*. Each State Party may give consideration to establishing mechanisms to share with other State Parties information or evidence needed to establish criminal, civil or administrative liability pursuant to article 5.

3. States Parties shall carry out their obligations under paragraphs 1 and 2 in conformity with any treaties or other arrangements on mutual legal assistance or information exchange that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

**Article 12 *bis* [13]**

None of the offences set forth in article 2 shall be regarded, for the purposes of extradition or mutual legal assistance, as a fiscal offence. States Parties may not refuse a request for extradition or for mutual legal assistance on the sole ground that it concerns a fiscal offence.

**Article 17 [18]**

1. States Parties shall cooperate in the prevention of the offences set forth in article 2 by taking all practicable measures, adapting their domestic legislation, if necessary, to prevent and counter preparations in their respective territories for the commission of those offences within or outside their territories, including:

(a) Measures to prohibit in their territories illegal activities of persons and organizations that knowingly encourage, instigate, organize or engage in the commission of offences set forth in article 2;

(b) Measures requiring financial institutions and other professions involved in financial transactions to utilize the most efficient measures available for the identification of their usual or occasional customers, as well as customers in whose interest accounts are opened, and to report unusual or suspicious transactions. For this purpose, States Parties shall consider:

(i) Adopting regulations prohibiting the opening of accounts the holders or beneficiaries of which are unidentified or unidentifiable, and measures to ensure that such institutions verify the identity of the real owners of such transactions;

(ii) With respect to the identification of legal entities, requiring financial institutions, when necessary, to take measures to verify the legal existence and the structure of the customer by obtaining, either from a public register or from the customer or both, proof of incorporation, including information concerning the customer's name, legal form, address, directors and provisions regulating the power to bind the entity;

(ii) *bis* Adopting regulations imposing on financial institutions the obligation to report promptly to the competent authorities all complex, unusual large transactions and unusual patterns of transactions, which have no apparent economic or visible lawful purpose, without fear of assuming criminal or civil liability for breach of any restriction on disclosure of information if they report their suspicions in good faith;

(iii) Requiring financial institutions to maintain, for at least five years, all necessary records on transactions, both domestic or international;

(c) Considering measures for the supervision, including, for example, the licensing, of all money-transmission agencies;

(d) Considering implementing feasible measures to detect or monitor the physical cross-border transportation of cash and bearer negotiable instruments, subject to strict safeguards to ensure proper use of information and without impeding in any way the freedom of capital movements.

2. States Parties shall further cooperate in the prevention of the offences set forth in article 2 by exchanging accurate and verified information in accordance with their domestic law and coordinating administrative and other measures taken, as appropriate, to prevent the commission of offences set forth in article 2, in particular by:

(a) Establishing and maintaining channels of communication between their competent agencies and services to facilitate the secure and rapid exchange of information concerning all aspects of offences set forth in article 2;

(b) Cooperating with one another in conducting inquiries, with respect to the offences set forth in article 2, concerning:

(i) The identity, whereabouts and activities of persons in respect of whom reasonable suspicion exists that they are involved in such offences;

(ii) The movement of funds or property relating to the commission of such offences.

3. Such States Parties may exchange information through the International Criminal Police Organization (Interpol).

## 17. Revised texts of articles 5, 7, 8, 12 and 17 [18] prepared by the Friends of the Chairman (A/C.6/54/WG.1/CRP.15/Rev.2)

**Article 5**

1. Each State Party, in accordance with its domestic legal system, shall take the necessary measures to ensure that when a person responsible for the management or control of a legal entity located in its territory or organized under its laws has, in that capacity, committed an offence set forth in article 2, that legal entity may be held liable in accordance with the provisions of this article. Such liability may be criminal, civil or administrative.

2. Such liability is incurred without prejudice to the criminal liability of individuals having committed the offences.

3. Each State Party shall ensure, in particular, that legal entities liable in accordance with paragraph 1 above are subject to effective and proportionate measures.

**Article 7**

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 when:

(a) The offence is committed in the territory of that State; or

(b) The offence is committed on board a vessel flying the flag of that State or an aircraft registered under the laws of that State at the time the offence is committed; or

(c) The offence is committed by a national of that State.

2. A State Party may also establish its jurisdiction over any such offence when:

(a) The offence was directed towards or resulted in the carrying out of an offence referred to in article 2, paragraph 1, subparagraph (a) or (b), in the territory of or against a national of that State; or

(b) The offence was directed towards or resulted in the carrying out of an offence referred to in article 2, paragraph 1, subparagraph (a) or (b), against a State or government facility of that State abroad, including diplomatic or consular premises of that State; or

(c) The offence was directed towards or resulted in an offence referred to in article 2, paragraph 1, subparagraph (a) or (b), committed in an attempt to compel that State to do or abstain from doing any act; or

(d) The offence is committed by a stateless person who has his or her habitual residence in the territory of that State; or

(e) The offence is committed on board an aircraft which is operated by the Government of that State.

3. Upon ratifying, accepting, approving or acceding to this Convention, each State Party shall notify the Secretary-General of the United Nations of the jurisdiction it has established in accordance with paragraph 2. Should any change take place, the State Party concerned shall immediately notify the Secretary-General.

4. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 in cases where the alleged offender is present in its territory and it does not extradite that person to any of the States Parties that have established their jurisdiction in accordance with paragraphs 1 or 2.

5. When more than one State Party claims jurisdiction over the offences set forth in article 2, the relevant States Parties shall strive to coordinate their actions appropriately, in particular concerning the conditions for prosecution and the modalities for mutual legal assistance.

6. This Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

**Article 8**

1. Each State Party shall take appropriate measures, in accordance with its domestic legal principles, for the identification, detection and freezing or seizure of any funds or other means used or intended to be used in any manner in order to commit the offences set forth in article 2 as well as the proceeds derived from such offences, for purposes of possible forfeiture.

2. Each State Party shall take appropriate measures, in accordance with its domestic legal principles, for the forfeiture of funds and other means used or intended to be used for committing the offences set forth in article 2 and the proceeds derived from such offences.

3. Each State Party concerned may give consideration to concluding agreements on the sharing with other States Parties, on a regular or case-by-case basis, of such funds, other means or proceeds thereof.

4. Each State Party shall consider establishing mechanisms whereby the funds derived from the forfeitures referred to in this article are utilized to compensate the victims of offences referred to in article 2, paragraph 1, subparagraph (a) or (b), or their families.

5. The provisions of this article shall be implemented without prejudice to the rights of third parties acting in good faith.

*Proposed definition*

"Proceeds" means any funds or other kind of benefits derived from or obtained, directly or indirectly, through the commission of an offence set forth in article 2.

**Article 12**

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal investigations or criminal or extradition proceedings in respect of the offences set forth in article 2, including assistance in obtaining evidence in their possession necessary for the proceedings.

2. States Parties may not refuse a request for mutual legal assistance on the ground of bank secrecy.

2 *bis*. The requesting Party shall not transmit nor use information or evidence furnished by the requested Party for investigations, prosecutions or proceedings other than those stated in the request without the prior consent of the requested Party.

2 *ter*. Each State Party may give consideration to establishing mechanisms to share with other State Parties information or evidence needed to establish criminal, civil or administrative liability pursuant to article 5.

3. States Parties shall carry out their obligations under paragraphs 1 and 2 in conformity with any treaties or other arrangements on mutual legal assistance or information exchange that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

**Article 12 *bis* [13]**

None of the offences set forth in article 2 shall be regarded, for the purposes of extradition or mutual legal assistance, as a fiscal offence. States Parties may not refuse a request for extradition or for mutual legal assistance on the sole ground that it concerns a fiscal offence.

**Article 17 [18]**

1. States Parties shall cooperate in the prevention of the offences set forth in article 2 by taking all practicable measures, *inter alia*, by adapting their domestic legislation, if necessary, to prevent and counter preparations in their respective territories for the commission of those offences within or outside their territories, including:

(a) Measures to prohibit in their territories illegal activities of persons and organizations that knowingly encourage, instigate, organize or engage in the commission of offences set forth in article 2;

(b) Measures requiring financial institutions and other professions involved in financial transactions to utilize the most efficient measures available for the identification of their usual or occasional customers, as well as customers in whose interest accounts are opened, and to report unusual or suspicious transactions. For this purpose, States Parties shall consider:

(i) Adopting regulations prohibiting the opening of accounts the holders or beneficiaries of which are unidentified or unidentifiable, and measures to ensure that such institutions verify the identity of the real owners of such transactions;

(ii) With respect to the identification of legal entities, requiring financial institutions, when necessary, to take measures to verify the legal existence and the structure of the customer by obtaining, either from a public register or from the customer or both, proof of incorporation, including information concerning the customer's name, legal form, address, directors and provisions regulating the power to bind the entity;

(ii) *bis* Adopting regulations imposing on financial institutions the obligation to report promptly to the competent authorities all complex, unusual large transactions and unusual patterns of transactions, which have no apparent economic or obviously lawful purpose, without fear of assuming criminal or civil liability for breach of any restriction on disclosure of information if they report their suspicions in good faith;

(iii) Requiring financial institutions to maintain, for at least five years, all necessary records on transactions, both domestic or international.

2. States Parties shall further cooperate in the prevention of offences set forth in article 2 by considering:

(a) Measures for the supervision, including, for example, the licensing, of all money-transmission agencies;

(b) Feasible measures to detect or monitor the physical cross-border transportation of cash and bearer negotiable instruments, subject to strict safeguards to ensure proper use of information and without impeding in any way the freedom of capital movements.

3. States Parties shall further cooperate in the prevention of the offences set forth in article 2 by exchanging accurate and verified information in accordance with their domestic law and coordinating administrative and other measures taken, as appropriate, to prevent the commission of offences set forth in article 2, in particular by:

(a) Establishing and maintaining channels of communication between their competent agencies and services to facilitate the secure and rapid exchange of information concerning all aspects of offences set forth in article 2;

(b) Cooperating with one another in conducting inquiries, with respect to the offences set forth in article 2, concerning:

(i) The identity, whereabouts and activities of persons in respect of whom reasonable suspicion exists that they are involved in such offences;

(ii) The movement of funds relating to the commission of such offences.

4. Such States Parties may exchange information through the International Criminal Police Organization (Interpol).

## 18. Revised texts of articles 5, 7, 8, 12 and 17 [18] prepared by the Friends of the Chairman (A/C.6/54/WG.1/CRP.15/Rev.3)

**Article 5**

1. Each State Party, in accordance with its domestic legal system, shall take the necessary measures to enable a legal entity located in its territory or organized under its laws to be held liable when a person responsible for the management or control of that legal entity has, in that capacity, committed an offence set forth in article 2. Such liability may be criminal, civil or administrative.

2. Such liability is incurred without prejudice to the criminal liability of individuals having committed the offences.

3. Each State Party shall ensure, in particular, that legal entities liable in accordance with paragraph 1 above are subject to effective, proportionate and dissuasive criminal, civil or administrative sanctions. Such sanctions may include monetary sanctions.

**Article 7**

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 when:

(a) The offence is committed in the territory of that State; or

(b) The offence is committed on board a vessel flying the flag of that State or an aircraft registered under the laws of that State at the time the offence is committed; or

(c) The offence is committed by a national of that State.

2. A State Party may also establish its jurisdiction over any such offence when:

(a) The offence was directed towards or resulted in the carrying out of an offence referred to in article 2, paragraph 1, subparagraph (a) or (b), in the territory of or against a national of that State; or

(b) The offence was directed towards or resulted in the carrying out of an offence referred to in article 2, paragraph 1, subparagraph (a) or (b), against a State or government facility of that State abroad, including diplomatic or consular premises of that State; or

(c) The offence was directed towards or resulted in an offence referred to in article 2, paragraph 1, subparagraph (a) or (b), committed in an attempt to compel that State to do or abstain from doing any act; or

(d) The offence is committed by a stateless person who has his or her habitual residence in the territory of that State; or

(e) The offence is committed on board an aircraft which is operated by the Government of that State.

3. Upon ratifying, accepting, approving or acceding to this Convention, each State Party shall notify the Secretary-General of the United Nations of the jurisdiction it has established in accordance with paragraph 2. Should any change take place, the State Party concerned shall immediately notify the Secretary-General.

4. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 in cases where the alleged offender is present in its territory and it does not extradite that person to any of the States Parties that have established their jurisdiction in accordance with paragraphs 1 or 2.

5. When more than one State Party claims jurisdiction over the offences set forth in article 2, the relevant States Parties shall strive to coordinate their actions appropriately, in particular concerning the conditions for prosecution and the modalities for mutual legal assistance.

6. This Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

**Article 8**

1. Each State Party shall take appropriate measures, in accordance with its domestic legal principles, for the identification, detection and freezing or seizure of any funds used or intended to be used in any manner in order to commit the offences set forth in article 2 as well as the proceeds derived from such offences, for purposes of possible forfeiture.

2. Each State Party shall take appropriate measures, in accordance with its domestic legal principles, for the forfeiture of funds used or intended to be used for committing the offences set forth in article 2 and the proceeds derived from such offences.

3. Each State Party concerned may give consideration to concluding agreements on the sharing with other States Parties, on a regular or case-by-case basis, of such funds, other means or proceeds thereof.

4. Each State Party shall consider establishing mechanisms whereby the funds derived from the forfeitures referred to in this article are utilized to compensate the victims of offences referred to in article 2, paragraph 1, subparagraph (a) or (b), or their families.

5. The provisions of this article shall be implemented without prejudice to the rights of third parties acting in good faith.

*Proposed definition*

"Proceeds" means any funds derived from or obtained, directly or indirectly, through the commission of an offence set forth in article 2.

**Article 12**

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal investigations or criminal or extradition proceedings in respect of the offences set forth in article 2, including assistance in obtaining evidence in their possession necessary for the proceedings.

2. States Parties may not refuse a request for mutual legal assistance on the ground of bank secrecy.

2 *bis*. The requesting Party shall not transmit nor use information or evidence furnished by the requested Party for investigations, prosecutions or proceedings other than those stated in the request without the prior consent of the requested Party.

2 *ter*. Each State Party may give consideration to establishing mechanisms to share with other State Parties information or evidence needed to establish criminal, civil or administrative liability pursuant to article 5.

3. States Parties shall carry out their obligations under paragraphs 1 and 2 in conformity with any treaties or other arrangements on mutual legal assistance or information exchange that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

**Article 12 *bis* [13]**

None of the offences set forth in article 2 shall be regarded, for the purposes of extradition or mutual legal assistance, as a fiscal offence. States Parties may not refuse a request for extradition or for mutual legal assistance on the sole ground that it concerns a fiscal offence.

**Article 17 [18]**

1. States Parties shall cooperate in the prevention of the offences set forth in article 2 by taking all practicable measures, *inter alia*, by adapting their domestic legislation, if necessary, to prevent and counter preparations in their respective territories for the commission of those offences within or outside their territories, including:

(a) Measures to prohibit in their territories illegal activities of persons and organizations that knowingly encourage, instigate, organize or engage in the commission of offences set forth in article 2;

(b) Measures requiring financial institutions and other professions involved in financial transactions to utilize the most efficient measures available for the identification of their usual or occasional customers, as well as customers in whose interest accounts are opened, and to report unusual or suspicious transactions. For this purpose, States Parties shall consider:

(i) Adopting regulations prohibiting the opening of accounts the holders or beneficiaries of which are unidentified or unidentifiable, and measures to ensure that such institutions verify the identity of the real owners of such transactions;

(ii) With respect to the identification of legal entities, requiring financial institutions, when necessary, to take measures to verify the legal existence and the structure of the customer by obtaining, either from a public register or from the customer or both, proof of incorporation, including information concerning the customer's name, legal form, address, directors and provisions regulating the power to bind the entity;

(ii) *bis* Adopting regulations imposing on financial institutions the obligation to report promptly to the competent authorities all complex, unusual large transactions and unusual patterns of transactions, which have no apparent economic or obviously lawful purpose, without fear of assuming criminal or civil liability for breach of any restriction on disclosure of information if they report their suspicions in good faith;

(iii) Requiring financial institutions to maintain, for at least five years, all necessary records on transactions, both domestic or international.

2. States Parties shall further cooperate in the prevention of offences set forth in article 2 by considering:

(a) Measures for the supervision, including, for example, the licensing, of all money-transmission agencies;

(b) Feasible measures to detect or monitor the physical cross-border transportation of cash and bearer negotiable instruments, subject to strict safeguards to ensure proper use of information and without impeding in any way the freedom of capital movements.

3. States Parties shall further cooperate in the prevention of the offences set forth in article 2 by exchanging accurate and verified information in accordance with their domestic law and coordinating administrative and other measures taken, as appropriate, to prevent the commission of offences set forth in article 2, in particular by:

(a) Establishing and maintaining channels of communication between their competent agencies and services to facilitate the secure and rapid exchange of information concerning all aspects of offences set forth in article 2;

(b) Cooperating with one another in conducting inquiries, with respect to the offences set forth in article 2, concerning:

(i) The identity, whereabouts and activities of persons in respect of whom reasonable suspicion exists that they are involved in such offences;

(ii) The movement of funds relating to the commission of such offences.

4. States Parties may exchange information through the International Criminal Police Organization (Interpol).

## 19. Proposal submitted by the United Kingdom of Great Britain and Northern Ireland (A/C.6/54/WG.1/CRP.16)

**Article 1**

For the purposes of this Convention:

1. ["Financing" — incorporate the concept in art. 2 (1)]

2. "Funds" means assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets [, including, but not limited to, bank credits, travellers' cheques, bank cheques, money orders, share certificates, securities, bonds, bankers' drafts and letters of credit];

3. ["Organization" — delete]

4. "State or government facility" means [no change].

**Article 2**

1. Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully provides or accepts funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, to prepare for or to commit:

(a) Offences specified ...

## 20. Proposal submitted by Guatemala (A/C.6/54/WG.1/CRP.17)

**Article 8**

At the end of paragraph 4 add the following sentence:

"The establishment of any such mechanism shall be without prejudice to such rights to compensation as those victims may have under the generally applicable law of torts of the State or States concerned."

**Explanation**. This is an *ex abundanti cautela* provision meant to ensure that no State avails itself of paragraph 4 to effectively deprive victims of the crimes in question of compensation or to delay or hamper payment thereof.

## 21. Non-paper submitted by the United Kingdom of Great Britain and Northern Ireland (A/C.6/54/WG.1/CRP.18)

**Article 2**

1. Any person commits an offence ... if that person ... provides funds with the intention that they should be used ... to carry out:

(a) an act which would be an offence for the purposes of a convention listed in annex I to this Convention;

## 22. Proposal submitted by Guatemala to the revised text proposed in document A/C.6/54/WG.1/CRP.15 (A/C.6/54/WG.1/CRP.19)

**Article 5**

**Paragraph 1**

Replace the last part of the paragraph with the following:

"has, as such, committed an act considered to be an offence under article 2 of the present Convention, the said entity shall incur criminal, civil or administrative liability."

**Paragraphs 3, 4 and 5**

Delete paragraph 2 and renumber paragraphs 4 and 5 as 3 and 4, respectively.

## 23. Proposal submitted by Guatemala

## Amendment to the revised proposal submitted by the United Kingdom of Great Britain and Northern Ireland, contained in document A/C.6/54/WG.1/CRP.11 (A/C.6/54/WG.1/CRP.20)

**Paragraph 1**

In the last sentence, between the words "which" and "shall", insert ", unless the depositary is the Secretary-General of the United Nations,".

## 24. Proposal submitted by Mexico (A/C.6/54/WG.1/CRP.21)

**Article 5**

1. Replace paragraph 4 with the following text:

"4. States Parties shall ensure, in particular, that effective, proportionate and dissuasive penal or non-penal sanctions, including monetary sanctions, are imposed on legal entities liable in accordance with the present article."

## 25. Proposal submitted by France (A/C.6/54/WG.1/CRP.22)

**Article 17 [18]**

1. Unchanged

2.

(a) ...

(b) ...

(i) ...

(ii) ...

(c) If they consider it necessary, States Parties may exchange information through the International Criminal Police Organization (Interpol);

## 26. Proposal submitted by the Syrian Arab Republic (A/C.6/54/WG.1/CRP.23)

**Article 2**

**First paragraph**

Delete subparagraph A of paragraph 1.

**Second paragraph**

Redraft paragraph B (a new paragraph) to read as follows:

"An act intended to cause death or serious bodily or psychological injury or the destruction in full or in part of a public or private establishment by using any criminal method whatsoever when such acts by their nature or context are designed to terrorize a Government, an international organization or a civilian population."

## 27. Proposal submitted by the Syrian Arab Republic (A/C.6/54/WG.1/CRP.24)

**Article 5**

*Paragraph 1.* Redraft to delete "in accordance with the provisions of this article".

*Paragraph 2.* Add "in accordance with the domestic laws of the State concerned" at the end of the paragraph.

**Article 7**

Insert the following phrase at the outset of paragraph 6:

"without prejudice to the norms of general international law".

**Article 8**

Rephrase paragraph 5 of the English version to read:

"The provisions of this article shall be implemented without prejudice to the rights of others acting in good faith".

## 28. Proposal submitted by Brazil (A/C.6/54/WG.1/CRP.25)

**Article 2, paragraph 1**

1. Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally proceeds with the financing of a person or organization in the knowledge that such financing will or could be used, in full or in part, in order to prepare or commit:

(a) An act designed to cause death or serious bodily injury to a civilian or to any other person, when such an act, by its nature or context, constitutes a means of intimidating a Government, international and non-governmental organizations or the civilian population; or

(b) An offence within the scope of one of the Conventions itemized in the Annex, subject to its ratification by the State Party, as long as it carries the characteristics mentioned in subparagraph (a) above.

## 29. Proposal submitted by the Netherlands (A/C.6/54/WG.1/CRP.26)

**Article 2**

*New paragraph 1 bis*

If the provision or acceptance of the funds has not been completed by reason of circumstances dependent on the perpetrator's will, there will be no offence.

## 30. Proposal submitted by Colombia, Costa Rica and Mexico (A/C.6/54/WG.1/CRP.27)

**Article 2**

1. Any person commits an offence within the meaning of this Convention if that person voluntarily provides, accepts or collects funds by any means, directly or indirectly, with the intention that the funds should be used, or with the full knowledge and consent that the funds will be used, in full or in part, to prepare for or to commit:

(a) ...

Delete subparagraph (c) of article 2, paragraph 4.

## 31. Proposal submitted by Mexico (A/C.6/54/WG.1/CRP.28)

**Article 5, paragraph 3**

Each State Party shall ensure, in particular, that legal entities liable in accordance with paragraph 1 above are subject to effective, proportionate and dissuasive criminal, administrative or civil sanctions. Such sanctions may include monetary sanctions.

## 32. Proposal submitted by Australia (A/C.6/54/WG.1/CRP.29)

**Article 5**

1. Each State Party, in accordance with its domestic legal system, shall take the necessary measures to enable a legal entity located in its territory or organized under its laws to be held liable, when a person responsible for the management or control of that legal entity has, in that capacity, committed an offence set forth in article 2. Such liability may be criminal, civil or administrative.

## 33. Discussion paper submitted by France (A/C.6/54/WG.1/CRP.30)

**Preamble**

*The States Parties to this Convention,*

*Bearing in mind* the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of good-neighbourliness and friendly relations and cooperation among States,

*Deeply concerned* about the worldwide escalation of acts of terrorism in all its forms and manifestations,

*Recalling* the Declaration on Measures to Eliminate International Terrorism, annexed to General Assembly resolution 49/60 of 9 December 1994, in which, "the States Members of the United Nations solemnly reaffirm their unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomever committed, including those which jeopardize the friendly relations among States and peoples and threaten the territorial integrity and security of States",

*Noting* that the Declaration also encouraged States "to review urgently the scope of the existing international legal provisions on the prevention, repression and elimination of terrorism in all its forms and manifestations, with the aim of ensuring that there is a comprehensive legal framework covering all aspects of the matter",

*Recalling* General Assembly resolution 53/108 of 8 December 1998, in which the Assembly decided that the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996 should "elaborate a draft international convention for the suppression of terrorist financing to supplement related existing international instruments",

*Recalling also* General Assembly resolution 51/210 of 17 December 1996, paragraph 3, subparagraph (f), in which the Assembly calls upon all States "to take steps to prevent and counteract, through appropriate domestic measures, the financing of terrorists and terrorist organizations, whether such financing is direct or indirect through organizations which also have or claim to have charitable, social or cultural goals or which are also engaged in unlawful activities such as illicit arms trafficking, drug dealing and racketeering, including the exploitation of persons for purposes of funding terrorist activities, and in particular to consider, where appropriate, adopting regulatory measures to prevent and counteract movements of funds suspected to be intended for terrorist purposes without impeding in any way the freedom of legitimate capital movements and to intensify the exchange of information concerning international movements of such funds",

*Recalling further* General Assembly resolution 52/165 of 15 December 1997, in which the Assembly calls upon States to "consider, in particular, the implementation of the measures set out in paragraphs 3 (a) to (f) of its resolution 51/210" of 17 December 1996,

*Noting* that financing which terrorists may obtain increasingly influences the number and seriousness of international acts of terrorism they commit,

*Noting also* that existing multilateral legal instruments do not specifically address such financing,

*Being convinced* of th[illegible]nt need to enhance international cooperation between States in devising and adopt[illegible]ective measures for the prevention of the financing of terrorism as well as the prosecution and punishment of the perpetrators of actions contributing to terrorism,

*Considering* that the financing of terrorism is a matter of grave concern to the international community as a whole,

*Have agreed as follows:*

## 34. Revised discussion paper submitted by France (A/C.6/54/WG.1/CRP.30/Rev.1)

### Preamble

*The States Parties to this Convention,*

*Bearing in mind* the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of good-neighbourliness and friendly relations and cooperation among States,

*Deeply concerned* about the worldwide escalation of acts of terrorism in all its forms and manifestations,

*Recalling* all the relevant General Assembly resolutions on the matter, including resolution 49/60 of 9 December 1994 and its annex on the Declaration on Measures to Eliminate International Terrorism, in which, "the States Members of the United Nations solemnly reaffirm their unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomever committed, including those which jeopardize the friendly relations among States and peoples and threaten the territorial integrity and security of States",

*Noting* that the Declaration also encouraged States "to review urgently the scope of the existing international legal provisions on the prevention, repression and elimination of terrorism in all its forms and manifestations, with the aim of ensuring that there is a comprehensive legal framework covering all aspects of the matter",

*Recalling* General Assembly resolution 51/210 of 17 December 1996, paragraph 3, subparagraph (f), in which the Assembly calls upon all States "to take steps to prevent and counteract, through appropriate domestic measures, the financing of terrorists and terrorist organizations, whether such financing is direct or indirect through organizations which also have or claim to have charitable, social or cultural goals or which are also engaged in unlawful activities such as illicit arms trafficking, drug dealing and racketeering, including the exploitation of persons for purposes of funding terrorist activities, and in particular to consider, where appropriate, adopting regulatory measures to prevent and counteract movements of funds suspected to be intended for terrorist purposes without impeding in

any way the freedom of legitimate capital movements and to intensify the exchange of information concerning international movements of such funds",

*Recalling also* General Assembly resolution 52/165 of 15 December 1997, in which the Assembly calls upon States to "consider, in particular, the implementation of the measures set out in paragraphs 3 (a) to (f) of its resolution 51/210" of 17 December 1996,

*Recalling further* General Assembly resolution 53/108 of 8 December 1998, in which the Assembly decided that the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996 should "elaborate a draft international convention for the suppression of terrorist financing to supplement related existing international instruments",

*Noting* that financing which terrorists may obtain increasingly influences the number and seriousness of international acts of terrorism they commit,

*Noting also* that existing multilateral legal instruments do not expressly address such financing,

*Being convinced* of the urgent need to enhance international cooperation between States in devising and adopting effective measures for the prevention of the financing of terrorism as well as the prosecution and punishment of the perpetrators of actions contributing to terrorism,

*Considering* that the financing of terrorism is a matter of grave concern to the international community as a whole,

*Have agreed as follows:*

## 35. Draft report of the Working Group (A/C.6/54/WG.1/CRP.31 and Add.1-12)

...

## 36. Revised discussion paper presented by the coordinator on article 1 (A/C.6/54/WG.1/CRP.32)

**Article 1**

For the purposes of this Convention:

1. "Funds" means assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to or interest in such assets, including but not limited to bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit.

2. "A State or government facility" means any permanent or temporary facility or conveyance that is used or occupied by representatives of a State, members of Government, the legislature or the judiciary, or by officials or employees of a State or any other public authority or entity, or by employees or officials of an intergovernmental organization in connection with their official duties.

3. "Proceeds" means any funds derived from or obtained, directly or indirectly, through the commission of an offence set forth in article 2.

## 37. Proposal submitted by India (A/C.6/54/WG.1/CRP.33)

**Article 2, paragraph 1**

*Amend subparagraph (b) to read as follows:*

(b) Any other act intended to cause death or serious bodily injury to any person, when the purpose of such an act is by its nature or context to intimidate or compel a third party, namely, a State, an international organization, a natural or juridical person, or a group of persons, to do or to abstain from doing any act.

## 38. Proposal submitted by Pakistan and the Syrian Arab Republic (A/C.6/54/WG.1/CRP.34)

**Preamble**

1. *Amend the first two lines of the third of preambular paragraph to read as follows:*

Recalling all relevant General Assembly resolutions, including resolution 49/60 of 9 December 1994, by which it adopted the Declaration on Measures to Eliminate International Terrorism, and in which

2. *Insert the following new fifth preambular paragraph:*

Recalling General Assembly resolution 40/61 of 9 December 1985, in paragraph 9 of which the Assembly urged all States, unilaterally and in cooperation with other States, as well as relevant United Nations organs, to contribute to the progressive elimination of the causes underlying international terrorism and to pay special attention to all situations, including colonialism, racism and situations involving mass and flagrant violations of human rights and fundamental freedoms and those involving alien occupation, that may give rise to international terrorism and may endanger international peace and security,

3. *Amend the last preambular paragraph to read as follows:*

Considering that international terrorism and its financing is a matter of grave concern to the international community as a whole,

## 39. Revised text prepared by the Friends of the Chairman (A/C.6/54/WG.1/CRP.35)

**Preamble**

*The States Parties to this Convention,*

*Bearing in mind* the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of good-neighbourliness and friendly relations and cooperation among States,

*Deeply concerned* about the worldwide escalation of acts of terrorism in all its forms and manifestations,

*Recalling* the Declaration on the Occasion of the Fiftieth Anniversary of the United Nations, contained in General Assembly resolution 50/6 of 24 October 1995,

*Recalling also* all the relevant General Assembly resolutions on the matter, including resolution 49/60 of 9 December 1994 and its annex on the Declaration on Measures to Eliminate International Terrorism, in which the States Members of the United Nations solemnly reaffirmed their unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomever committed, including those which jeopardize the friendly relations among States and peoples and threaten the territorial integrity and security of States,

*Noting* that the Declaration on Measures to Eliminate International Terrorism also encouraged States to review urgently the scope of the existing international legal provisions on the prevention, repression and elimination of terrorism in all its forms and manifestations, with the aim of ensuring that there is a comprehensive legal framework covering all aspects of the matter,

*Recalling* General Assembly resolution 51/210 of 17 December 1996, paragraph 3, subparagraph (f), in which the Assembly called upon all States to take steps to prevent and counteract, through appropriate domestic measures, the financing of terrorists and terrorist organizations, whether such financing is direct or indirect through organizations which also have or claim to have charitable, social or cultural goals or which are also engaged in unlawful activities such as illicit arms trafficking, drug dealing and racketeering, including the exploitation of persons for purposes of funding terrorist activities, and in particular to consider, where appropriate, adopting regulatory measures to prevent and counteract movements of funds suspected to be intended for terrorist purposes without impeding in any way the freedom of legitimate capital movements and to intensify the exchange of information concerning international movements of such funds,

*Recalling also* General Assembly resolution 52/165 of 15 December 1997, in which the Assembly called upon States to consider, in particular, the implementation of the measures set out in paragraphs 3 (a) to (f) of its resolution 51/210 of 17 December 1996,

*Recalling further* General Assembly resolution 53/108 of 8 December 1998, in which the Assembly decided that the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996 should elaborate a draft international convention for the suppression of terrorist financing to supplement related existing international instruments,

*Considering* that the financing of terrorism is a matter of grave concern to the international community as a whole,

*Noting* that the number and seriousness of acts of international terrorism depend on the financing that terrorists may obtain,

*Noting also* that existing multilateral legal instruments do not expressly address such financing,

*Being convinced* of the urgent need to enhance international cooperation among States in devising and adopting effective measures for the prevention of the financing of terrorism, as well as the prosecution and punishment of the perpetrators of actions contributing to terrorism,

*Have agreed as follows:*

**Article 1**

For the purposes of this Convention:

1. "Funds" means assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including

electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit.

2. "A State or governmental facility" means any permanent or temporary facility or conveyance that is used or occupied by representatives of a State, members of Government, the legislature or the judiciary or by officials or employees of a State or any other public authority or entity or by employees or officials of an intergovernmental organization in connection with their official duties.

3. "Proceeds" means any funds derived from or obtained, directly or indirectly, through the commission of an offence set forth in article 2 below.

**Article 2**

...

**Article 3**

This Convention shall not apply where the offence is committed within a single State, the alleged offender is a national of that State and is present in the territory of that State and no other State has a basis under article 7, paragraph 1, or article 7, paragraph 2, to exercise jurisdiction, except that the provisions of articles 12 to 17 shall, as appropriate, apply in those cases.

**Article 4**

[*See Annex I*]

**Article 5**

1. Each State Party, in accordance with its domestic legal system, shall take the necessary measures to enable a legal entity located in its territory or organized under its laws to be held liable when a person responsible for the management or control of that legal entity has, in that capacity, committed an offence set forth in article 2. Such liability may be criminal, civil or administrative.

2. Such liability is incurred without prejudice to the criminal liability of individuals having committed the offences.

3. Each State Party shall ensure, in particular, that legal entities liable in accordance with paragraph 1 above are subject to effective, proportionate and dissuasive criminal, civil or administrative sanctions. Such sanctions may include monetary sanctions.

**Article 6**

[*See Annex I*]

**Article 7**

[*See Annex I*]

**Article 8**

1. Each State Party shall take appropriate measures, in accordance with its domestic legal principles, for the identification, detection and freezing or seizure of any funds used or

intended to be used in any manner in order to commit the offences set forth in article 2 as well as the proceeds derived from such offences, for purposes of possible forfeiture.

2. Each State Party shall take appropriate measures, in accordance with its domestic legal principles, for the forfeiture of funds used or intended to be used for committing the offences set forth in article 2 and the proceeds derived from such offences.

3. Each State Party concerned may give consideration to concluding agreements on the sharing with other States Parties, on a regular or case-by-case basis, of such funds or proceeds thereof.

4. Each State Party shall consider establishing mechanisms whereby the funds derived from the forfeitures referred to in this article are utilized to compensate the victims of offences referred to in article 2, paragraph 1, subparagraph (a) or (b), or their families.

5. The provisions of this article shall be implemented without prejudice to the rights of third parties acting in good faith.

*Proposed definition*

"Proceeds" means any funds derived from or obtained, directly or indirectly, through the commission of an offence set forth in article 2.

**Article 9**

[*See Annex I*]

**Article 10**

[*See Annex I*]

**Article 11**

[*See Annex I*]

**Article 12**

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal investigations or criminal or extradition proceedings in respect of the offences set forth in article 2, including assistance in obtaining evidence in their possession necessary for the proceedings.

2. States Parties may not refuse a request for mutual legal assistance on the ground of bank secrecy.

2 *bis*. The requesting Party shall not transmit nor use information or evidence furnished by the requested Party for investigations, prosecutions or proceedings other than those stated in the request without the prior consent of the requested Party.

2 *ter*. Each State Party may give consideration to establishing mechanisms to share with other State Parties information or evidence needed to establish criminal, civil or administrative liability pursuant to article 5.

3. States Parties shall carry out their obligations under paragraphs 1 and 2 in conformity with any treaties or other arrangements on mutual legal assistance or information exchange that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

**Article 12 *bis* [13]**

None of the offences set forth in article 2 shall be regarded, for the purposes of extradition or mutual legal assistance, as a fiscal offence. States Parties may not refuse a request for extradition or for mutual legal assistance on the sole ground that it concerns a fiscal offence.

**Article 13 [14]**

[*See Annex I*]

**Article 14 [15]**

[*See Annex I*]

**Article 15 [16]**

**Article 16 [17]**

[*See Annex I*]

**Article 17 [18]**

1. States Parties shall cooperate in the prevention of the offences set forth in article 2 by taking all practicable measures, *inter alia*, by adapting their domestic legislation, if necessary, to prevent and counter preparations in their respective territories for the commission of those offences within or outside their territories, including:

(a) Measures to prohibit in their territories illegal activities of persons and organizations that knowingly encourage, instigate, organize or engage in the commission of offences set forth in article 2;

(b) Measures requiring financial institutions and other professions involved in financial transactions to utilize the most efficient measures available for the identification of their usual or occasional customers, as well as customers in whose interest accounts are opened, and to pay special attention to unusual or suspicious transactions and report transactions suspected of stemming from a criminal activity. For this purpose, States Parties shall consider:

(i) Adopting regulations prohibiting the opening of accounts the holders or beneficiaries of which are unidentified or unidentifiable, and measures to ensure that such institutions verify the identity of the real owners of such transactions;

(ii) With respect to the identification of legal entities, requiring financial institutions, when necessary, to take measures to verify the legal existence and the structure of the customer by obtaining, either from a public register or from the customer or both, proof of incorporation, including information concerning the customer's name, legal form, address, directors and provisions regulating the power to bind the entity;

(ii) *bis* Adopting regulations imposing on financial institutions the obligation to report promptly to the competent authorities all complex, unusual large transactions and unusual patterns of transactions, which have no apparent economic or obviously lawful purpose, without fear of assuming criminal or civil liability for breach of any restriction on disclosure of information if they report their suspicions in good faith;

(iii) Requiring financial institutions to maintain, for at least five years, all necessary records on transactions, both domestic or international.

2. States Parties shall further cooperate in the prevention of offences set forth in article 2 by considering:

(a) Measures for the supervision, including, for example, the licensing, of all money-transmission agencies;

(b) Feasible measures to detect or monitor the physical cross-border transportation of cash and bearer negotiable instruments, subject to strict safeguards to ensure proper use of information and without impeding in any way the freedom of capital movements.

3. States Parties shall further cooperate in the prevention of the offences set forth in article 2 by exchanging accurate and verified information in accordance with their domestic law and coordinating administrative and other measures taken, as appropriate, to prevent the commission of offences set forth in article 2, in particular by:

(a) Establishing and maintaining channels of communication between their competent agencies and services to facilitate the secure and rapid exchange of information concerning all aspects of offences set forth in article 2;

(b) Cooperating with one another in conducting inquiries, with respect to the offences set forth in article 2, concerning:

(i) The identity, whereabouts and activities of persons in respect of whom reasonable suspicion exists that they are involved in such offences;

(ii) The movement of funds relating to the commission of such offences.

4. States Parties may exchange information through the International Criminal Police Organization (Interpol).

**Article 18 [19]**

[*See Annex I*]

**Article 19 [20]**

[*See Annex I*]

**Article 20 [22]**

[*See Annex I*]

**Article 21 [24]**

[*See Annex I*]

**Article 22 [25]**

[*See Annex I*]

**Article 23 [26]**

[*See Annex I*]

**Article 24 [27]**

[*See Annex I*]

**Article 25 [28]**

*[See Annex I]*

*Testimonium*

*[See Annex I]*

## 40. Revised text prepared by the Friends of the Chairman (A/C.6/54/WG.1/CRP.35/Rev.1)

*[See Annex I]*

## 41. Proposal submitted by Kuwait

**Preamble**

Kuwait supports the proposal submitted by Pakistan and the Syrian Arab Republic (A/C.6/54/WG.1/CRP.34) concerning the amendment of the first two lines of the third preambular paragraph and the insertion of a new fifth preambular paragraph.

**Article 1**

"For the purposes of this Convention:

"1. "Financing" means the transfer or reception of funds."

Rationale: Transfer and reception are to be regarded as an action involving the two conditions of offer and acceptance, so that the two elements of a crime are here present: the material, namely the act of transferring and receiving; and the moral, namely criminal intent.

"2. "Funds" means cash, assets or property, movable or immovable, however acquired.[5]

"3. "Organization" means any entity that brings together a group of persons united and linked together by a common interest and declared objectives.[6]

"4. "State or Government facility" means any permanent or temporary facility or conveyance that is used or occupied by representatives of a State, members of Government, the legislature or the judiciary or by officials or employees of the State or any other public authority or entity or by employees or officials of an intergovernmental organization in connection with their official duties.[7]

"5. "Proceeds" means any funds derived from or obtained, directly or indirectly, through the commission of an offence set forth in article 2 hereunder."

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[5] Adopting the proposal of Guatemala while leaving the expression "however acquired" in place for the sake of generality.

[6] A proposal by Kuwait. There is nevertheless room for opinion here concerning the extent to which "organization" should be defined or left undefined. This is because the definition may vary from one case to another.

[7] We propose that this definition be deleted, because it is not needed and because the meaning of "State or government facility" differs in its breadth or narrowness from one country and one administrative system to another.

We propose that a definition of "terrorism" should be included in the Convention since the concept is basic to the instrument.

**Article 2**

"Any person commits an offence within the meaning of this Convention if that person intentionally [*bi-sūrah muta`ammadah*] (*`āmidan muta`ammadan*)[8] proceeds with the financing of a person or organization by any means whatever, directly or indirectly, to contribute to the preparation or commission of one of the serious offences[9] itemized in annex I to this Convention, provided that a State Party to this Convention is a party to the conventions in question,[10] when such an act, by its nature or context, constitutes a means of intimidating a Government or the civilian population."[11]

We propose the inclusion in the annex to the Convention of the four Geneva Conventions [of 12 August 1949] and their additional protocols.

We propose that paragraphs 2, 3 and 4 be deleted.

Rationale: It appears to us from our reading of these provisions that they involve useless repetition and redundancy and contain major inconsistencies. They should therefore be deleted.

**Article 4**

**Paragraph (a)**

This paragraph should be deleted.

Rationale: It appears to us from our reading of the paragraph that there is a sense of compelling a State that is a party to the Convention to comply with the provisions of the conventions mentioned in the annex, all of which, in Kuwait's view, it may not have signed or ratified. The inclusion of this paragraph is therefore to be considered as a kind of unacceptable compulsion. It is this that motivated us to propose the amendment of article 2, paragraph 1 (a).

**Paragraph (b)**

We propose the amendment of the paragraph, so that article 4 would read as follows:

"Each State Party shall adopt such measures as may be necessary to punish the offences set forth in article 2."[12]

Rationale: The reason for this amendment is to give the State the freedom to take the measures it deems appropriate *on the basis of those conventions with respect to which it has taken the necessary constitutional measures and that have for it entered into force*, because such conventions on entering into force are automatically considered to be national law that must be applied and complied with without any specific stipulation to that effect and also subject to the State's various laws and regulations.

[8] Adopting the proposal of the Syrian Arab Republic.

[9] Adopting the proposal of Japan.

[10] Adopting the proposal of [the Republic of] Korea.

[11] Adopting the proposal of Austria.

[12] Subject to the possibility of altering the annex or altering the wording of article 2.

**Article 5**

We propose that the article as a whole be amended as follows:

"1. Each State Party, in accordance with its domestic legal system, shall take the necessary measures to enable a person responsible for the management or control of a legal entity located in its territory or organized under its laws to be held liable when, acting as its representative, he has knowingly, through the agency of one or more persons responsible for that entity,[13] committed an offence set forth in article 2 of this Convention.[14]

"2. The person responsible for the legal entity shall incur criminal, civil or administrative liability resulting from the legal entity itself, it being understood that effective and appropriate measures shall be taken against the person concerned."[15]

**Article 7**

We propose the amendment of some paragraphs of this article, as follows:

**Paragraph 2 (a), (b) and (c)**

We propose that the reference to "article 2, paragraph 1, subparagraph (a) or (b)" should be amended in accordance with the above proposal to amend article 2.

**Paragraph 2 (e)**

We have a question concerning the extent to which a State Party to the Convention may establish its jurisdiction over crimes committed on board an aircraft which is operated by the Government of that State. Is it a Government aircraft whether civil or military? May a State use the right of jurisdiction over aircraft of this kind as representing the sovereignty of the State whose flag and emblem they carry?

**Paragraph 6**

This paragraph should be deleted because there is no need for it given its redundancy and insignificance.

**Article 8**

**Paragraphs 1 and 2**

We propose that paragraphs 1 and 2 should be combined to read as follows:

"1. Each State party shall take appropriate measures, in accordance with its domestic system, for the identification, detection, freezing or seizure of funds resulting from

[13] Adopting the proposal of the Syrian Arab Republic.

[14] Subject to the repositioning or rewording of article 2.

[15] A Kuwaiti proposal based on the fact that it is the natural person that is fully liable for the actions of the legal entity and that it is not the legal entity that incurs civil, criminal or administrative liability but the individual responsible for the entity. (For example, in the case of the board of directors of a company it is the individual members who are fully responsible for the legal entity and it is they and not the legal entity who incur liability.)

the commission of the offences set forth in article 2[16] of this Convention as well as the proceeds derived from such offences, for purposes of forfeiture in case of need."

**Paragraph 5**

The paragraph should be amended to accord with the English version and should read as follows:

"5. The provisions of this article shall be implemented without prejudice to the rights of third parties acting in good faith."[Changing *rahnan bi-huqūq al-ghayr dhawī al-nīyah al-hasanah* ("subject to the rights of others of good faith") to *ākhidhan bi-`ayn al-i`tibār al-taraf al-thālith husn al-nīyah* ("taking into account the third party, good faith [*sic*]").]

In this context, we join the Syrian delegation in wondering whether, in this paragraph, the expression "the rights of others" (*huqūq al-ghayr*) means [those of] a State party or an ordinary individual, it being understood that the ordinary individual is not involved in the Convention because he is a person in private law and not an entity in international law.

We propose the amendment of the Arabic version of the definition of "proceeds" in article 1 to read as follows:

[["Proceeds" means] any funds derived from or obtained, directly or indirectly, through the commission of an offence set forth in article 2.]

Change *tansha'* ("arising") to *tujna* ("realized"), and change *tuhsal* to *yuhsal `alayhā* ("obtained").

**Article 17**

**Paragraph 1 (c)**

We propose the deletion of the words "and licensing" [A/AC.252/1999/WP.47] in accordance with the proposal of Mexico [A/AC.252/1999/WP.52].

**Article 19 *bis***

The proposal contained in document A/C.6/54/WG.1/CRP.4 would add to the Convention an article 19 *bis* to exclude acts governed by international humanitarian law from the scope of application of the Convention. This is because they are humanitarian acts and funding provided in the event of armed conflict. The delegation of Kuwait therefore agrees with this proposal so that humanitarian organizations involved in providing funding and humanitarian services in time of armed conflict can be protected from having the provisions of the Convention applied to them and so that their actions will not be considered terrorism as characterized by the Convention.

[16] Subject to the alteration of the annex or rewording of article 2

# Annex III

## Informal summary of the discussions in the Working Group, prepared by the Chairman*

### General discussion

1. At its 1st and 11th meetings, held on 27 September and 8 October 1999, the Working Group held a general exchange of views on the draft international convention for the suppression of acts of nuclear terrorism and the draft international convention for the suppression of the financing of terrorism.

2. Several delegations reiterated their unequivocal condemnation of terrorism in all its forms and manifestations and stressed the importance of speedy elaboration and adoption of both conventions. Some delegations observed that the completion of the work on the two draft conventions would enable the Ad Hoc Committee to proceed to the elaboration of a general convention on international terrorism. In this connection, the point was made that, rather than adopting a piecemeal approach and dealing with such hypothetical issues as those of nuclear terrorism, efforts should be focused on the development of a comprehensive legal instrument that would contain a definition of terrorism, distinguishing it from the legitimate struggle of peoples for national liberation and self-determination, and condemn State terrorism as the most dangerous form of terrorism.

### A. Elaboration of the draft international convention for the suppression of acts of nuclear terrorism

3. At the 1st meeting of the Working Group, the representative of the Russian Federation noted with appreciation the informal contacts among delegations that took place during the inter-sessional period with a view to elaborating a formulation on the scope of the draft international convention acceptable to all delegations. He expressed the hope that efforts would continue to make it possible to finalize the draft convention during the present session.

4. During the general discussion, the point was made that the draft convention should not address issues relating to disarmament, which are better dealt with in other fora. It was stated that efforts should rather be focused on the early conclusion of an international legal instrument for the suppression of acts of nuclear terrorism, which posed a real and very serious threat. It was further suggested that, in the light of limited possibilities of compromise on the existing alternative texts on the scope of application, there was a need to consider a new text, which should take into account the concerns of States on this matter.

5. At the 11th meeting, the Chairman reviewed the status of work relating to the draft convention and appointed a coordinator with a view to organizing open-ended informal consultations on the draft convention at an appropriate time during the current session of the Sixth Committee, who would report to the Chairman of the Sixth Committee on the outcome of the consultations (see sect. II, paras. 10 and 11). The coordinator made a statement regarding the organization of such informal consultations (ibid., paras. 12 and 13).

### B. Elaboration of the draft international convention for the suppression of the financing of terrorism

6. At the 1st meeting of the Working Group, the representative of France introduced a working paper on the revised versions of articles 1 and 2 (A/54/37, annex I.B). It was stated that the aim of the proposed draft convention was to prevent the crime of terrorism and punish its financing and, in that regard, that article 1, containing definitions, and article 2, on the scope of the offence within the meaning of the draft convention, were essential provisions of the instrument.

7. It was considered that the working paper submitted by France provided a good basis for further work on those articles. It was observed that, in order to gain broad support, the text of the draft convention should be carefully drafted to give due attention to accommodating requirements of different domestic laws. The importance of achieving a consensus text was also emphasized so as to ensure the effectiveness of the proposed legal instrument through universal participation.

8. The Chairman introduced the discussion paper (A/54/37, annex I.A) prepared by the Bureau at the end of the March session of the Ad Hoc Committee, which was a consolidated version of articles 3 to 25, incorporating the revised texts of articles 3 to 8, 12 and 17. It was noted that the discussion paper did not constitute a proposal by the Bureau and was primarily an attempt to reflect, in a balanced

* Equivalent provisions contained in the articles in document A/C.6/54/WG.1/CRP.35/Rev.1 (see annex I) are indicated in square brackets.

fashion, the views of delegations expressed in the Working Group of the Ad Hoc Committee, with a view of facilitating the elaboration of the draft convention.

9. The point was made that the discussion paper submitted by the Bureau was a good basis for the work on the draft convention. It was suggested that the Working Group should focus its attention on those key provisions relating to the definition of the crime of financing terrorism in order to determine the scope of application of the draft convention. It was also noted that the purpose of the draft convention was to target the sponsors of terrorism in order to deter as well as to prosecute and punish their criminal acts without penalizing the legitimate activities of humanitarian organizations or those who contribute funds in good faith. The need to establish a specific criminal intention on the part of those who supply the funds was underscored in this connection.

10. At the 11th meeting, the Chairman introduced a revised text of the draft convention, with article 7, paragraph 6, orally amended (see annex I to the present report). Some delegations stated that the draft convention, which would enable States effectively to deter as well as to prosecute and punish the financing of terrorist acts, was an important contribution to the fight against terrorism. It was pointed out, however, that there was no consensus on the text, since not all the proposals regarding the draft articles were taken into account, and more time was needed in order to finalize the text. Some delegations reserved the right to discuss the text in the Sixth Committee.

## Preamble

### Consideration on the basis of document A/C.6/54/WG.1/CRP.30

11. At the 8th meeting of the Working Group, on 5 October 1999, a proposal for the preamble of the draft convention was introduced (see A/C.6/54/WG.1/CRP.30). The sponsor delegation noted that all members of the international community are directly affected by the phenomenon of terrorism. It was stressed that a new instrument was needed to meet the growing sophistication of transnational terrorism, especially in regard to how it is financed. Further emphasis was placed on the preventive effect of the draft convention.

12. Strong support was expressed for the proposed text.

13. The suggestion was made to add the following preambular paragraph found in the International Convention for the Suppression of Terrorist Bombings, "[r]ecalling the Declaration on the Occasion of the Fiftieth Anniversary of the United Nations of 24 October 1995".

14. A further suggestion was made to add to the preambular paragraph starting with "[r]ecalling General Assembly resolution 53/108," the following text "and subsequently will address means of further developing a comprehensive legal framework of conventions dealing with international terrorism, including considering, on a priority basis, the elaboration of a comprehensive convention on international terrorism" (see A/AC.252/1999/WP.48). Others opposed this suggestion, noting that it was not relevant to the subject of the present convention.

15. It was also suggested that the phrase "that the financing of terrorism" in the last preambular paragraph be replaced with "international terrorism and its financing".

16. In regard to the preambular paragraph referring to "existing multilateral legal instruments", the observation was made that the word "specifically" could be replaced with "expressly".

17. The view was expressed that a reference to General Assembly resolutions on eliminating the causes of terrorism could be included (see A/C.6/54/WG.1/CRP.34).

### Consideration on the basis of document A/C.6/54/WG.1/CRP.30/Rev.1

18. At the 9th meeting of the Working Group, on 6 October, the sponsor delegation introduced a revised version of the preamble, contained in document A/C.6/54/WG.1/CRP.30/Rev.1. Reference was made to preambular paragraph 3, which recalled all relevant General Assembly resolutions.

19. During the discussion on the revised text, the proposal made at the previous meeting to add a preambular paragraph referring to the Declaration on the Occasion of the Fiftieth Anniversary of the United Nations of 24 October 1995, was reiterated.

20. It was also recommended that the preambular paragraph relating to international humanitarian law, contained in the original proposal for the draft convention submitted by the delegation of France (see document A/54/37, annex II), be inserted into the text under consideration.

21. In reference to the preambular paragraph referring to General Assembly resolution 51/210, the suggestion was made to replace the word "calls" in the second line with "called".

22. A further proposal was made to replace the preambular paragraph beginning with "[n]oting that financing which terrorists" with "[n]oting that the commission of terrorism depends on financing".

23. It was also suggested that the penultimate preambular paragraph could be moved to before the paragraph referring to General Assembly resolution 53/108.

24. Concerning the preambular paragraph beginning with "[b]eing convinced of the urgent need", the proposal was made to add the phrase "and suppression" after the term "prevention".

25. Further proposals for the preamble were submitted in document A/C.6/54/WG.1/CRP.34, some of which were supported, others opposed.

#### Consideration on the basis of document A/C.6/54/WG.1/CRP.35

26. A revised text of the preamble, as contained in document A/C.6/54/WG.1/CRP.35, was introduced by the French delegation at the 10th meeting of the Working Group, on 7 October 1999. It was noted that, following on an earlier suggestion, a reference to the Declaration on the Occasion of the Fiftieth Anniversary of the United Nations, contained in General Assembly resolution 50/6 of 24 October 1995, had been included. Furthermore, the term "calls" in the seventh and eighth preambular paragraphs, had been changed to "called".

27. The paragraph beginning with the words "[c]onsidering that the financing ..." had been moved to become the tenth preambular paragraph, so as to make the order of the preamble more logical.

28. The eleventh preambular paragraph had been reformulated to clarify its meaning. The suggestion was made that the final preambular paragraph should be amended to include a reference to the "suppression" of the financing of terrorism, as follows: "..., as well as for its suppression through the prosecution and punishment of the perpetrators". That change was reflected in the subsequent version of the preamble, contained in document A/C.6/54/WG.1/CRP.35/Rev.1, which was placed before the Working Group at its 11th meeting, on 8 October 1999.

29. During the discussion on the text contained in document A/C.6/54/WG.1/CRP.35, the attention of the Working Group was drawn to the proposal contained in document A/C.6/54/WG.1/CRP.34, and in particular paragraph 2 relating to the insertion of a new fifth preambular paragraph recalling General Assembly resolution 40/61 of 9 December 1985. It was argued that a reference to that resolution accorded with the aim of the draft convention. In response, the observation was made that the reference in the fourth preambular paragraph to "[r]ecalling ... all the relevant General Assembly resolutions" was sufficient.

30. The view was also expressed that the concerns underlying the proposal in document A/C.6/54/WG.1/CRP.34 were adequately addressed in the text under consideration, and that a reference to the causes of terrorism in the preamble was not necessary.

### Article 1

#### Consideration on the basis of the working paper prepared by France on articles 1 and 2[1]

31. The Working Group considered article 1 on the basis of the working paper prepared by France contained in document A/54/37, annex I.B, which had been submitted at the end of the session of the Ad Hoc Committee in March 1999.

32. In introducing its proposed text for article 1, the sponsor delegation pointed out that the definitions of "financing", "funds", "organization" and "State or government facility" were necessary for determining the scope of the draft convention, and were meant to be precise and reflect the comments made by the delegations at the session of the Ad Hoc Committee in March. It was noted that the definition of "financing", in particular, attempted to cover all means of financing within the scope of the draft convention. The only outstanding issue in this connection was whether to include in the definition the reception of funds in addition to their transfer.

33. Following the discussion in the Working Group, the sponsor delegation (France) submitted a revised text for article 1 (see A/C.6/54/WG.1/CRP.9).

#### Paragraph 1

34. With regard to the proposed definition of the term "financing", while support was expressed for retaining it in article 1, the view was also expressed that paragraph 1 could be deleted entirely from the article. Similarly, as the term only appeared in article 2, paragraph 1, it was proposed that the definition could be placed there instead (see A/C.6/54/WG.1/CRP.16). In terms of the latter proposal, the reference to "proceeds with the financing" in article 2, paragraph 1, would then be replaced with the phrase "provides or accepts funds".

35. Regarding the reference to the "transfer" of funds, concerns were expressed that the term did not sufficiently cover all types of financial assistance. Proposals for alternative formulations included replacing the term with "providing", "provision", or "making funds available", so as to make it clear that an actual transfer was not required per se.

36. The French working paper had included the concept of "reception" of funds in square brackets to account for those views expressed during the Ad Hoc Committee session in favour of including such a reference. During the current session, differing views were expressed regarding its inclusion.

37. Those that opposed its inclusion expressed the concern that it would cast the meaning of the term "financing" too broadly, criminalizing a wide variety of activities beyond what was originally intended. It was pointed out that such a reference could contradict article 2, and that it captured within its purview not only active acts of transferring but also the passive act of receiving. It was also noted that the reference was unnecessary to cover the case of the middleman who received funds, since the subsequent transfer of those funds would fall within the scope of the term "transfer".

38. Others expressed strong support for the inclusion of the reference to "reception" of funds so as to enhance the capability of States to counter the funnelling of funds through middlemen, who possessed the specific intention required by the draft convention, or through other similar complex financial arrangements used to finance terrorist acts. It was noted that, without a reference to "reception", the middleman who possesses the funds with the required intent, but declines to transfer them or is apprehended before he has transferred them might not fall within the scope of the definition of "financing". As such, broadening the purview of the term "financing" to include the reception of funds would provide States with greater options in their prosecutorial strategies. In terms of a concurring view, the inclusion of the reference to "reception" was in fact envisaged by the specific intent requirement contained in article 2.

39. The view was also expressed that if the notion of "reception" was to be retained, then it would be necessary to clarify the knowledge requirement in relation to those accused of receiving such funds. Opposition was also expressed to the inclusion of an express reference to the knowledge requirement.

40. Other related suggestions included inserting the required element of intent to qualify the term "reception", or criminalizing the reception as a separate offence to transferring. Furthermore, it was pointed out that the problem might be one of terminology, and that a more neutral term, such as "acquisition" could be used to overcome the concerns expressed with the use of "reception" (see A/C.6/54/WG.1/CRP.2).

41. A further proposed text was submitted as document A/C.6/54/WG.1/CRP.5.

### Paragraph 2

42. Reference was made in the Working Group to the discrepancy between the definition of "funds" in paragraph 2, which included a reference to "property", and the reference in article 8, paragraphs 1 to 3, to "property, funds and other means". Support was expressed for a subsequent proposal that the term "property" be deleted whenever it appeared in conjunction with the term "funds" since "funds" was intended to refer to all property.

43. Support was expressed by some for providing only a generic definition, without the inclusion of examples, so as not to include types of financial resources that might become outmoded in the future, as well as to ensure the necessary flexibility to encompass new types of funding that might arise in the future. In the same vein, it was suggested that the paragraph be ended after the words "property" (see A/C.6/54/1999/CRP.5), "intangible" or "acquired", respectively.

44. The suggestion was made to add the words "including but not limited to", in line with the proposal in document A/AC.252/1999/WP.60, so as to make it clear that the list is merely illustrative (see also A/C.6/54/WG.1/CRP.16). It was also observed that the inclusion of the term "notably" already made the list illustrative.

45. As to the formulation of paragraph 2 as proposed, it was suggested that the reference to "cash or the currency of any State" be clarified since the reference to "currency" included "cash". It was also suggested that the reference instead be as follows: "including cash, or the currency of any State". Furthermore, it was observed that the reference to "cash" appeared twice in the proposed text.

46. The view was expressed that the provision could be formulated differently, as follows: "pecuniary resources or any form of pecuniary benefits", or "pecuniary benefits, tangible or intangible, however acquired".

47. A preference was also expressed for the formulation contained in document A/AC.252/1999/WP.60, as well as for the definition of "property" contained in article 1, paragraph (q), of the 1988 United Nations Convention

against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. The following reformulation of the paragraph was proposed:

> "'funds' means assets of every kind, whether tangible or intangible, movable or immovable, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, traveller's cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit".
>
> (See also the proposal in A/C.6/54/WG.1/CRP.16.)

**Paragraph 3**

48. While a preference was expressed for retaining the text of paragraph 3, as proposed, according to another view, the definition was unnecessarily lengthy and not useful. Similarly, a proposal for its deletion was submitted to the Working Group (see A/C.6/54/WG.1/CRP.16).

49. The view was expressed that if the reference to "person" in article 2, paragraph 1, included both individuals and organizations, then it would not be necessary to define "organization". However, if the term "person" could not apply to an organization, then it would have to be defined in article 1. In the latter regard, a preference was expressed for the formulation of the definition of "organization" contained in document A/AC.252/1999/WP.6, which included a reference to the requirement of a hierarchical structure. This proposal was opposed in the Working Group.

50. A further similar proposal to add elements of hierarchy and coordination into the definition of organization was made (see A/C.6/54/WG.1/CRP.6).

51. A further suggestion was made to end the formulation of the provision after the phrase "declared objectives" so as to exclude legal entities. Similarly, it was proposed that the text after the phrase "declared objectives" be replaced with the following, more general, formulation: "and whether or not the group constitutes a legal entity" (see A/C.6/54/WG.1/CRP.5).

52. The view was expressed that the reference to a "group ... of two or more persons" was tautologous, and could be reformulated to read "any group of persons, whatever their declared objectives".

**Paragraph 4**

53. While support was expressed for the proposed text of paragraph 4, the suggestion was also made that it be moved to article 7, which contained the only reference in the draft convention to "State or government facility".

54. The view was expressed that the scope of the provision could be expanded to include a more general reference to "any facility".

**Additional definitions**

55. It was proposed that two additional definitions be included for the terms "profit from the offence" and "financial institution", respectively (see A/C.6/54/WG.1/CRP.6).

56. Conversely, the view was also expressed that no new definitions were necessary.

**Consideration on the basis of document A/C.6/54/WG.1/CRP.35**

57. At the 10th meeting of the Working Group, on 7 October 1999, the coordinator of the informal consultations on article 1 introduced a new text for the provision, which had been included in document A/C.6/54/WG.1/CRP.35. It was noted that divergent views had been expressed on the retention of the reference to the terms "financing" and "organization". The solution was to delete both references in article 1, together with the reformulation of the *chapeau* to article 2, so as to omit any reference to those two terms.

58. With regard to the definition of the term "funds", it was observed that the text was based on the footnote contained in document A/C.6/54/WG.1/CRP.9.

59. It was further observed that the definition of "State or government facility" was consistent with the International Convention for the Suppression of Terrorist Bombings, and that the definition of "proceeds", as proposed in document A/C.6/54/WG.1/CRP.15/Rev.3 under article 8, had been included.

60. The text of article 1 was subsequently included in the revised text prepared by the Friends of the Chairman (A/C.6/54/WG.1/CRP.35/Rev.1), which had been tabled before the Working Group at its 11th meeting, on 8 October 1999.

## Article 2

**Consideration on the basis of the working paper prepared by France on articles 1 and 2**[1]

61. The consideration of article 2 by the Working Group was undertaken on the basis of the working paper prepared

by France, contained in the report of the Ad Hoc Committee.[1]

62. In introducing the working paper, the sponsor delegation observed that the definition of the offence, found in article 2, had been drafted with a twofold objective. First, it addressed the financing of those acts within the scope of application of existing anti-terrorism conventions. In this connection it was also necessary to envisage the mechanism of updating the list of anti-terrorism conventions annexed to the present text, by including into it future relevant instruments. Secondly, article 2 was also concerned with the offence of causing death or serious bodily injury, which was not covered by the existing conventions (except for the International Convention for the Suppression of Terrorist Bombings). The point was made that, in order to convict a person for an offence under paragraph 1 of article 2, it should not be necessary to prove that the funds were used to prepare for or to commit a terrorist act. It was also noted that conviction would also follow attempts to commit offences as well as various forms of complicity in an offence.

### Paragraph 1

63. In regard to the *chapeau* of paragraph 1, it was suggested that the scope of the provision be limited by replacing the phrase "any person or organization" with "terrorist or other person who can be regarded as representing a terrorist organization". While the observation was made that the phrase "to prepare for" was vague and could be deleted, support was also expressed for its retention.

64. In terms of a further suggestion, the reference to "to prepare for" would be replaced with "to make essential preparations for".

65. Support was also expressed for the suggestion made in the context of the debate on article 1 to include the definition of "financing" in article 2, paragraph 1, and then to replace the phrase "proceeds with the financing" with "provides funds to any person". Similarly, an alternative suggestion was made to replace the phrase "person unlawfully proceeds with the financing" with "person unlawfully finances", since the reference to "proceeds with" implied the existence of a period of time prior to the commencement of the financing.

66. It was further suggested that the concept of "reception" of funds be inserted in the provision, provided that agreement was reached for its inclusion in paragraph 1 of article 1 (see A/C.6/54/WG.1/CRP.16).

67. Suggestions were made to delete the term "unlawfully" before the phrase "proceeds with the financing" since it was viewed as redundant. However, the view was also expressed that it would be useful to retain the reference to "unlawful", since it added an element of flexibility by, for example, excluding from the ambit of application of the draft convention legitimate activities, such as those of humanitarian organizations and ransom payments. In terms of a further related suggestion, the term "unlawfully" could be replaced with "deliberately", "willingly" or "knowingly".

68. As to the requirement of "knowledge", it was suggested that it be strengthened by adding the qualifier "full" before it, so as to limit the scope of application of the provision.

69. The suggestion was raised, in the context of the discussion of article 1, that the provision be reformulated so as to provide the reference to "person" in the plural which would have the effect of including "organizations", thus making the use of that term unnecessary.

### Paragraph 1, subparagraph (a)

70. It was proposed that the reference to "Offences" be replaced with "An offence" so as to make clear that the requisite intention might apply to one or more offences.

71. While the suggestion was made to add the qualifier "serious" before "offences" so as to avoid an overly broad application of the draft convention to trivial offences, support was expressed for retaining the text without such amendment.

72. A further similar suggestion was made to reformulate the provision so as to include a qualifier in line with subparagraph (b), namely "designed to intimidate a Government or a civilian population" (see A/AC.252/1999/WP.11 and A/C.6/54/WG.1/CRP.12).

73. It was also noted that the reference to "offences as defined in annex I" should be replaced with "offences specified in annex I", since those offences had already been defined in existing conventions.

74. Support was expressed for specifying the applicable offences clearly. In this regard, the proposal was made that the annex include a specific list of offences. However, the contrary view was expressed that such an approach would risk excluding, for example, any safeguards contained in other relevant provisions of the conventions in question.

75. Support was also expressed for the approach taken in the proposal, originally contained in document A/AC.252/1999/WP.11, to include ancillary offences such

as attempts and various forms of complicity in the annex. This view was opposed in the Working Group by those that preferred limiting the list to primary offences.

76. Differing views were expressed as to whether the provision should take the form of an "opt in" or "opt out" clause. Those who argued in favour of an "opt in" clause pointed to the fact that States may not, in fact, be parties to the conventions in the annex, and not be bound by their provisions. In terms of this argument, an "opt out" clause would, *inter alia*, delay the entry into force of the draft convention, since a State intending to become a party would have to evaluate all the treaties referred to in the annex, even those to which it is not a party. Hence, it was suggested that the draft convention apply only to those offences contained in those conventions to which the State was already a party (see A/C.6/54/WG.1/CRP.7), and that the State be given the option of making a further declaration indicating its willingness to be bound by the application of another treaty in the list to which it is not a party.

77. Conversely, a preference was expressed for including an "opt out" clause, which would be provided for in a new final clause (see A/C.6/54/WG.1/CRP.11 and CRP.20). In terms of this view, the problem of including offences defined in conventions to which a State is not a party was less acute, since the offences were being included merely by reference (see A/C.6/54/WG.1/CRP.18). It was argued further that an "opt in" clause would be impractical as it would require the constant monitoring of the ratification status of the listed conventions.

78. In terms of a further view, the existing formulation of the provision was satisfactory and should not be replaced with any other.

79. The view was also expressed that the list of conventions in the annex was not exhaustive. Therefore, the suggestion was also made to add a further provision so as to allow for the inclusion of new applicable conventions.

80. It was also proposed that the provision be deleted, and subparagraph (b) be amended so as to provide: "acts leading to death or bodily or psychological injury when such acts by their nature or context are designed to intimidate a civilian population".

**Paragraph 1, subparagraph (b)**

81. Support was expressed for the deletion of the provision in its entirety, on the basis, *inter alia*, that it was too vague and that it, in effect, created a new crime of terrorism in a convention on financing, without providing for the distinction between terrorist acts and the lawful acts of national liberation movements.

82. The suggestion was made that the reference to "[a]cts intended to cause death or serious bodily injury to a civilian or to any other person not engaged in an armed conflict" be moved to the annex, and the entire provision replaced with the following: "[o]ffences or acts which, by their nature or context, are designed to intimidate a government or a civilian population or to achieve certain other purposes of the offender[s] or actor[s]."

83. It was also recommended that the reference to "serious bodily injury" be deleted so as to narrow the scope of the draft convention to conform with certain domestic legal systems. This view was opposed in the Working Group, where it was pointed out that, without the reference, the provision would be unbalanced as it would be limited to the most extreme offences, and consequently would restrict prosecutions under the draft convention.

84. A further similar view was expressed that the provision should be refined so as to apply only to terroristic assassination or murder, along the lines of the proposal contained in document A/C.6/54/WG.1/CRP.3. Another proposed formulation of the provision was subsequently submitted to the Working Group (see A/C.6/54/WG.1/CRP.14).

85. Concern was expressed that the text under consideration would inadvertently include the activities of humanitarian organizations. In that regard, it was suggested that the draft convention make reference to the hierarchy of norms of international law, whereby in the context of armed conflict the application of humanitarian law would take precedence over that of the draft convention. A new article 19 *bis* was proposed to include such a limitation on the scope of the draft convention (see A/C.6/54/WG.1/CRP.4).

86. The proposal was also made that the reference to not being engaged in an "armed conflict" be deleted. Others opposed this proposal, noting that the phrase was intended to cover, *inter alia*, terrorist attacks on off-duty military forces of a State.

87. The qualifying phrase "designed to intimidate a government or a civilian population" at the end of the provision was the subject of some debate. While some preferred its deletion as there could be other reasons for committing a terrorist act, others suggested it be retained so as to exclude ordinary crimes.

88. A proposal was made to delete the phrase "by its nature or context". Some opposed this deletion because it would

suggest that the offence required proof of the perpetrator's subjective state of mind.

### Paragraph 2

89. The view was expressed that the provision could be deleted entirely because its content was implicit in paragraph 1. Conversely, support was expressed for retaining the provision since it contemplated the prevention of terrorist acts in the early stages of preparation. The importance of proving the requisite intent was underlined in that regard.

90. Concern was expressed regarding the concept of "preparation" as contained in the provision, which would render the scope of the draft convention too broad.

### Paragraph 3

91. Concerns were expressed regarding the inclusion of the notion of attempt within the ambit of the draft convention, as it could capture activities too remotely linked to the crime of financing, such as an attempt at the planning stage. While a preference was expressed for its deletion, others supported its inclusion since it would cover the situation of an unsuccessful attempt halted through measures undertaken by law enforcement agencies.

92. It was also suggested that the provision could be redrafted to ensure that persons are not to be indicted with proof.

### Paragraph 4

93. No substantive comments were made by the Working Group on subparagraphs (a) and (b) during its consideration of the text in question.

### Paragraph 4, subparagraph (c)

94. Subparagraph (c) was included in square brackets by the sponsor delegation to indicate that diverging views on the inclusion of the subparagraph were expressed during the Ad Hoc Committee session in March 1999.

95. During the discussion on the provision in the Working Group, it was suggested that it be deleted so as to limit the scope of the draft convention. Furthermore its inclusion was not supported in view of the fact that criminal liability on the basis of common purpose, or other similar conspiratorial bases, was not recognized in many domestic legal systems.

96. Conversely, support was expressed for the retention of the provision in the text on the grounds that the notion of "conspiracy" was pertinent in the context of the financing of terrorism to reach the conduct of those not directly involved in the act of terrorist financing, and was already incorporated in other conventions such as the International Convention for the Suppression of Terrorist Bombings.

97. A further proposal was made to redraft the provision along the lines of article 25, paragraph 3 (d), of the Rome Statute of the International Criminal Court.

### New paragraph 5

98. The proposal was made to add a new paragraph 5 to the article so as to incorporate an evidentiary standard concerning the proof of the requisite knowledge, intention or purpose (see A/C.6/54/CRP.10).

99. Further proposals for article 2 were submitted in documents A/C.6/54/WG.1/CRP.23, 25 to 27, and 33.

### Consideration on the basis of the text negotiated during informal consultations

100. At the 10th meeting of the Working Group, on 7 October 1999, the coordinator of the informal consultations introduced a revised text for, *inter alia*, articles 2 and the Annex contained in an informal document circulated in the Working Group.

101. During the subsequent consideration of the proposed text for article 2, the comment was made that the phrase "civilian or to any other person" implied that civilians did not take part in hostilities, which was considered not to be always the case. Instead, it was proposed that the provision be amended to read "injury to a person, whether civilian or not, taking an active part". That proposal was supported in the Working Group.

102. A further point was made that the reference to "civilians" had been included since it was agreed that a certain category of persons should never be targeted. However, it was also necessary to cover another subset of persons, namely, those who were not civilians but were not engaged in armed conflict either. Examples included off-duty military officers. To accept a broader definition would involve difficulties with the application of humanitarian law and could lead to the situation where certain acts would be classed as terrorism when they would be acceptable under humanitarian law.

103. Further concern was expressed regarding the meaning of the term "armed conflict" in paragraph 2, subparagraph (1) (b). Instead, a preference was expressed for the formulation of the subparagraph proposed in document A/C.6/54/WG.1/CRP.23. Support was expressed for that proposal. It was also pointed out that the reference to "armed conflict" was not appropriate since it could give rise to

disputes of interpretation, i.e., as to whether a particular act constituted terrorism, or was undertaken during "armed conflict".

104. The view was also expressed that the deletion of the term "armed conflict" would have a substantive impact on the draft convention, since it would leave out a category of military personnel not engaged in armed conflict. It was felt that such alteration would greatly affect the balance of the provision. However, it was also argued that such concerns were adequately dealt with by the inclusion of article 19 *bis*.

105. The observation was made that the deletion of the definition of the term "armed conflict" had been undertaken on the understanding that any reference to "armed conflict" in the draft convention should be understood in accordance with humanitarian law, consistent with the similar understanding in the International Convention on the Suppression of Terrorist Bombings and the draft international convention for the suppression of acts of nuclear terrorism.

106. The view was expressed that the Annex, as proposed, was insufficient.

107. It was further noted in the Working Group that the text under consideration was a compromise text.

#### Consideration on the basis of the revised text prepared by the Friends of the Chairman (A/C.6/54/WG.1/CRP.35/Rev.1)

108. A slightly modified version of the proposed text for article 2 was included in the revised text of the draft convention, prepared by the Friends of the Chairman (A/C.6/54/WG.1/CRP.35/Rev.1), tabled before the Working Group at its 11th meeting, on 8 October 1999. The text of the Annex, as finalized in the informal consultations, was also included in the revised text of the draft convention.

109. Furthermore, the Chairman made a statement in which it was recalled that a proposal to define the term "armed conflict" in paragraph 1, subparagraph (b), had been made. It was observed that some delegations had felt that a definition of the term was not really necessary and had requested its deletion. Furthermore, it was stated that after an exchange of views, the Working Group had decided to omit such a definition because the term "armed conflict" could only be interpreted and applied in accordance with international humanitarian law.

### Article 19 *bis* [21]

#### Consideration on the basis of the text negotiated during informal consultations

110. A proposal for the inclusion of an article 19 *bis* to cover the application of humanitarian law had been proposed during the initial consideration of article 2 (see A/C.6/54/WG.1/CRP.4).

111. Following extensive informal consultations, an informal text of articles 2, 19 *bis*, 20 *ter* and the Annex was introduced by the coordinator of the consultations at the 10th meeting of the Working Group, on 7 October 1999.

112. The text of the revised article 19 *bis* was included as article 21 in the text of the draft convention, prepared by the Friends of the Chairman (A/C.6/54/WG.1/CRP.35/Rev.1), which was placed before the Working Group at its 11th meeting, on 8 October 1999.

### Article 20 *bis* [23]

#### Consideration on the basis of document A/C.6/54/WG.1/CRP.11

113. At the 8th meeting of the Working Group, held on 5 October 1999, a proposal for a new article 20 *bis*, contained in document A/C.6/54/WG.1/CRP.11, was introduced following the discussions in the context of article 2. The sponsor delegation observed that the provision had been formulated in the form of an "opt out" clause, whereby a State Party which is not a party to a treaty listed in the annex could declare that in the application of the draft convention to that State Party, the provisions of that treaty should not be treated as offences referred to in article 2, paragraph 1, subparagraph (a).

114. Paragraph 2 contained a mechanism for updating the list of conventions in the annex. The sponsor delegation explained that the provision was designed to avoid lengthy parliamentary ratification procedures for each amendment to the list, since such amendment would be approved in advance on the ratification of the convention as a whole.

#### Paragraph 1

115. Support was expressed in the Working Group for the approach taken to paragraph 1.

#### Paragraph 2

116. Opposition was expressed in the Working Group to the proposed text for paragraph 2, on the grounds, *inter alia*, that

the automatic procedure envisaged would pose practical difficulties for States Parties due to lengthy parliamentary procedures for the ratification of amendments; and that it might contradict the Vienna Convention on the Law of Treaties by imposing new obligations on third parties without their consent. In response, the view was expressed that the provision did not contradict the Vienna Convention on the Law of Treaties. The addition would not result in States Parties automatically becoming parties to the convention in question.

117. Furthermore, it was pointed out that similar provisions were contained in other multilateral conventions in, for example, the disarmament and environment areas. In that connection, it was observed that the reference to treaties in those areas was not directly applicable, since such mechanisms usually related to the addition of technical annexes, and not the scope of the conventions in question. Such an amendment to the scope of the convention would require parliamentary approval.

118. A further preference was expressed for an "opt in" clause, along the lines of the proposal contained in document A/AC.252/1999/WP.29.

119. A preference was also expressed for not including the reference to "even if the treaty is not yet in force".

## Article 20 *ter* [23]

### Consideration on the basis of the text negotiated during informal consultations

120. Following the informal consultations on article 2, a text for a new article 20 *ter* was proposed by the coordinator of the consultations, at the 10th meeting of the Working Group, on 7 October 1999. The new provision related to the amendment of the Annex.

121. A revised version of the proposed article 20 *ter* was included as article 23 in the text of the draft convention, prepared by the Friends of the Chairman (A/C.6/54/WG.1/CRP.35/Rev.1), which was placed before the Working Group at its 11th meeting, on 8 October 1999.

## Article 5

### Consideration on the basis of the discussion paper submitted by the Bureau on articles 3 to 25[2]

122. The Working Group commenced its consideration of article 5 on the basis of the text submitted by the Bureau contained in annex I.A to the report of the Ad Hoc Committee. In introducing article 5, the Chairman noted that the Ad Hoc Committee had undertaken its second reading of article 5 on the basis of the revised text contained in document A/AC.252/1999/WP.45.[3]

123. With regard to paragraph 1, the Bureau had decided to delete the phrase "having their registered offices". The text under consideration therefore included three alternative criteria relating to legal entities, namely, "carrying out activities", "located in its territory", or "organized under its laws". The phrase "are held liable" was replaced with "may be held liable", as the concept of obligation was already contained in the use of the word "shall" in the first line. The phrase "knowingly, through the agency of" was replaced with the words ", with the full knowledge of", thus addressing the concerns that had been expressed regarding the necessary threshold required to establish liability, as well as concerns as to the use of the term "agency", which had different connotations in certain legal systems.

124. Furthermore, as regards the requirement concerning commission of offences by the legal entities in question, the words "derived profits from" were replaced with the words "benefited from". Similarly, the phrase "participated in the commission of offences" was replaced by "committed offences".

125. In terms of the new formulation of paragraph 2, the phrase "[s]uch legal entities may incur criminal, civil or administrative liability" was replaced with "[s]uch liability may be criminal, civil or administrative". Furthermore, the word "fundamental" before "legal principles" was deleted in light of concerns regarding its precise meaning.

126. While no change was made to paragraph 4, the phrase "legal entities responsible for committing an offence referred to in this Convention" in paragraph 4 was replaced with "legal entities liable in accordance with paragraph 1", so as to avoid any implication that liability could be expanded beyond the scope of paragraph 1. In addition, the phrase "effective measures that are commensurate with the offence" was replaced with "effective and proportionate measures", thus aligning the text with the French-language version.

127. It was decided to delete the original paragraph 5, which dealt with the notion of State responsibility under international law, on the grounds that it fell outside the scope of the draft convention.

**Paragraph 1**

128. During the debate in the Working Group on the proposed text for paragraph 5 contained in the report of the Ad Hoc Committee,[4] the suggestion was made that the phrase "in accordance with its domestic legal system" be inserted after the reference to "[e]ach State Party", so as to take into consideration the diversity of national legal systems.

129. Proposals were also made to delete the phrase "carrying out activities" which was considered to be too broad and too vague, as well as to delete the qualifier "full" before "knowledge" on similar grounds.

130. With regard to the three conditions for jurisdiction over legal entities, namely, their carrying out activities, or their being located in the territory of the State Party or their being organized under the laws of the State Party, it was suggested that it be clarified that States were not obliged to take measures covering all of the above conditions. A further proposal was made to delete the three conditions entirely, so as to leave the question of jurisdiction entirely to article 7.

131. Doubts were raised as regards the reference to "benefited from", which was considered to be too broad and could cover non-criminal activity. While it was suggested that the clause be deleted, others preferred its retention and expressed the view that legal entities that "benefited" from the illicit activities of their employees should be held liable. It was also pointed out, in that regard, that the provision was qualified by the phrase "may be held liable" which introduced a discretionary element, thus mitigating the broad application of the draft convention.

132. It was further proposed that the phrase "benefited from or committed offences set forth in article 2" be replaced with "committed acts set forth in article 2", or with the formulation contained in document A/AC.252/1999/WP.21, which, *inter alia*, emphasized the vicarious liability of legal entities. Support was expressed for the phrase "a person responsible for" contained in that proposal.

133. The proposal was made to add a qualifier regarding the failure to exercise management or control on the part of persons responsible for such management and control. A further similar preference was expressed for including an explicit reference to a high-level manager. It was also suggested that the phrase "action or acquiescence of one or more persons responsible for ... management or control", found in document A/AC.252/1999/WP.37, be reflected in the provision. Different views were expressed regarding the liability of the legal entity for the actions of those of its employees not acting in a managerial capacity. It was observed that, while an explicit reference to employees was not necessary in the text, if it was to be included then a provision outlining the duties of the legal entity would have to be included as well.

134. It was suggested that the term "committed" be replaced with "participated", to reflect the fact that many legal systems did not recognize the possibility of legal entities committing criminal acts.

135. The proposal was made in the Working Group that the provision be replaced with a formulation along the following lines: "States Parties shall adopt all necessary measures, in accordance with their legal principles, with a view to establishing the responsibility of legal entities located in their territories or organized under their laws, for the participation in offences criminalized in the present convention", so as to be closer to the language of the draft United Nations Convention against Transnational Organized Crime.

136. A proposal for a new text of article 5, paragraph 1, was subsequently submitted to the Working Group (see A/C.6/54/WG.1/CRP.1).

**Paragraph 2**

137. A preference was expressed for the deletion of the term "criminal", in view of the fact that some domestic legal systems did not recognize the concept of criminal liability of legal entities.

138. A further suggestion was made to delete the reference to "according to the legal principles of the State Party", at the end of the provision.

**Paragraph 4**

139. It was suggested to expand the cross-reference in the provision to paragraph 2 as well.

140. A reformulation of the text, as contained in document A/C.6/54/WG.1/CRP.21, was also proposed.

**Consideration on the basis of the revised texts of articles 5, 7, 8, 12 and 17 prepared by the Friends of the Chairman (A/C.6/54/WG.1/CRP.15)**

141. Following the discussion in the Working Group, a revised text of article 5 prepared by the Friends of the Chairman was tabled before the Working Group, at its 6th meeting, on 30 September 1999.

142. In introducing the revised text, the Chairman explained the changes made to the text contained in annex I.A to the report of the Ad Hoc Committee. He pointed out that the phrase "in accordance with its domestic legal system" had been inserted after the words "Each State Party", so as to maintain consistency with the draft United Nations Convention against Transnational Organized Crime.

143. Furthermore, in paragraph 1, the words "carrying out activities or" were not included in the revised draft, as suggested by some delegations.

144. The phrase "according to the legal principles of the State Party", in paragraph 2, was deleted as a consequence of the insertion of the reference to "its domestic legal system" in paragraph 1.

145. It was also decided to retain the reference to "proportionate measures" in paragraph 4, pending further discussions.

**Paragraph 1**

146. During the ensuing debate in the Working Group on the revised text for article 5, the suggestion was made that the reference to "an offence under article 2" be replaced with "an offence set forth in article 2", so as to conform with the agreed upon reference for the financing offences specified in article 2.

147. It was also proposed that the phrase "or on its behalf", should be added after "in that capacity", as it was not always easy to establish in which capacity the individual had acted.

148. The view was expressed that the phrase "shall incur liability" could be replaced with "may be held liable", as contained in the first text of the Bureau,[2] in view of the fact that the words "shall take" in the first line already made the provision mandatory. This view was opposed in the Working Group, where the suggestion was made to replace instead the phrase "shall incur liability" with "is held liable". That approach was viewed as being stricter and as providing an incentive for managers to supervise the activities of the legal entity much more closely. In response, it was pointed out that it was inappropriate to use mandatory language, such as "shall incur liability" or "is held liable", in advance of any proceedings establishing such liability. Furthermore, the concern was expressed that the reference to "shall incur liability" did not take into account the fact that, while a legal entity might be prima facie liable for its activities, it could rely on certain excuses or defences that would preclude such liability. That view was disputed in the Working Group.

149. The proposal was made to replace the last part of the paragraph with the text contained in document A/C.6/54/WG.1/CRP.19, which incorporated the substance of paragraph 2 into paragraph 1.

150. Support was also expressed for reinserting the notion of benefiting from, so as to be in line with the draft United Nations Convention against Transnational Crime. That suggestion was opposed in the Working Group, where concerns were expressed that the concept of "benefit" was too vague in the draft convention under consideration.

**Paragraph 2**

151. The proposal was made to incorporate the paragraph into paragraph 1, as described above.

**Paragraph 4**

152. While no comments were made regarding paragraph 3, the preference was expressed for deleting paragraph 4 in its entirety, since it was redundant, as the measures envisaged in the provision were implied in the reference to "necessary measures" in paragraph 1. The proposed deletion of the paragraph was opposed on the basis that it was necessary to ensure that measures would be taken not only against the individuals concerned, but also against the legal entity. It was also noted that similar provisions were to be found in other instruments, such as the International Convention for the Suppression of Terrorist Bombings (article 4), and that it played an important deterrent role.

153. Support was expressed for the proposal to reformulate paragraph 4 along the lines of the text subsequently submitted as document A/C.6/54/WG.1/CRP.28, which made reference to the types of sanctions imposed against legal entities. Conversely, concerns were expressed in the Working Group that strengthening the language in paragraph 4 raised serious questions of sovereignty, especially for those States that did not recognize the criminal liability of legal entities.

**Consideration on the basis of the revised texts of articles 5, 7, 8, 12 and 17, prepared by the Friends of the Chairman (A/C.6/54/WG.1/CRP.15/Rev.1)**

154. Following the discussion in the Working Group on the revised text in document A/C.6/54/WG.1/CRP.15, the Friends of the Chairman prepared a further revision, taking into account the suggestions made in the Working Group and various texts emanating from informal consultations. The new text was contained in document A/C.6/54/WG.1/CRP.15/Rev.1, and was introduced at the seventh meeting, on 4 October 1999.

155. At that meeting, the Chairman noted that paragraphs 1 and 2 of the previous text had been merged into a single paragraph. By moving the words "such liability may be criminal, civil or administrative" into paragraph 1, it was made clearer that such liability would arise in accordance with the domestic legal systems of States Parties. In view of the merger, the subsequent paragraphs were renumbered accordingly. Furthermore, the words "shall incur liability" have been substituted by the expression "may be held liable". Likewise, the phrase "or on its behalf" was added after "in that capacity". Consistent with the overall text of the draft convention, the phrase "under article 2 of this convention" was substituted with "set forth in article 2".

156. While no changes were made to paragraph 2 (former paragraph 3), it was decided to retain the existing formulation of paragraph 3 (former paragraph 4), pending the outcome of informal consultations, particularly regarding the words "effective and proportionate measures".

**Paragraph 1**

157. During the debate on the new revised text, the suggestion was made to replace the term "a legal entity" with "that legal entity".

158. As to the inclusion of the words "or on its behalf", differing views were expressed. While a preference was expressed for their deletion as being superfluous, others argued for its retention, *inter alia*, because it retained the notion of "benefit". It was also noted that retaining the reference could also serve to cover the situation of the manager acting beyond his or her powers, but still on behalf of the legal entity. A further suggestion was made by way of compromise to modify the text so as to read "in this capacity or on behalf of the entity". It was also observed that it was unclear whether the words "or on its behalf" also covered persons exercising a power of attorney.

159. Support was expressed for replacing the phrase "may be held liable" with a more definite phrase such as "is held liable" or "shall be held liable". That suggestion was opposed in the Working Group, where it was pointed out, *inter alia*, that the phrase "may be held liable" was to be read in conjunction with the requirement in the first line that "[e]ach State Party ... shall take the necessary measures".

160. While a further proposal was made to add the notion of "for the benefit" of the legal entity into the text, concerns were expressed in the Working Group that such an addition would make the scope of the article too broad.

161. A proposal was made to delete the reference to "in accordance with the provisions of this article" (see A/C.6/54/WG.1/CRP.24).

**Paragraph 2**

162. The suggestion was made that the provision could be modified to cover accomplice liability. However, it was pointed out that such liability was already contemplated under article 2.

163. A further proposal was made to add the phrase "in accordance with the domestic laws of the State concerned" at the end of the paragraph (see A/C.6/54/WG.1/CRP.24).

**Paragraph 3**

164. While support was expressed for retaining the text of the provision as revised, a preference for its deletion was also expressed.

**Consideration on the basis of the revised texts of articles 5, 7, 8, 12 and 17, prepared by the Friends of the Chairman (A/C.6/54/WG.1/CRP.15/Rev.2)**

165. On the basis of the discussion in the Working Group on the revised text of article 5, contained in document A/C.6/54/WG.1/CRP.15/Rev.1, the Friends of the Chairman prepared a further revision, contained in document A/C.6/54/WG.1/CRP.15/Rev.2.

166. In introducing the new text, at the 8th meeting of the Working Group, on 5 October 1999, the Chairman noted that the words "a legal entity", in paragraph 1, had been corrected to read "that legal entity". Furthermore, following the discussion in the Working Group, the words "on its behalf" were deleted in accordance with the views expressed in the Working Group. He also observed that the Friends of the Chairman had decided on retaining the reference to "may be held liable", and that no changes had been introduced

relating to the words "for the benefit", pending the outcome of informal consultations.

#### Paragraph 1

167. Reference was made during the discussion in the Working Group to the proposal for a new paragraph 1, contained in document A/C.6/54/WG.1/CRP.29. In expressing support for the proposal, it was observed that it represented a compromise between the insertion of a reference to "may be held liable" and to "shall be liable". While a preference was still expressed for retaining the existing reference to "may be held liable", the view was expressed that the proposed text was an acceptable compromise. As to the formulation of the proposal in document A/C.6/54/WG.1/CRP.29, the point was made that the reference to "enabling" a legal entity was inelegant and could be improved.

168. The suggestion was further made to insert in paragraph 1 a reference to "effective and proportionate measures", as contained in paragraph 3, and to delete paragraph 3 accordingly. In terms of a similar proposal, paragraph 3 would be merged into paragraph 1, and the word "measures" would be replaced with "sanctions".

#### Paragraph 3

169. Proposals were made during the debate to merge paragraph 3 into paragraph 1 (see above).

170. The Working Group considered the proposal for a new text for paragraph 3 (see A/C.6/54/WG.1/CRP.28), based on the 1999 revision of the draft United Nations Convention against Transnational Organized Crime. It was explained that the proposal was intended to clarify the reference in paragraph 3 to "measures". Support was expressed in the Working Group for the proposal.

#### Consideration on the basis of the revised texts of articles 5, 7, 8, 12 and 17, prepared by the Friends of the Chairman (A/C.6/54/WG.1/CRP.15/Rev.3)

171. Following the debate in the Working Group on the text contained in document A/C.6/54/WG.1/CRP.15/Rev.2, the Friends of the Chairman prepared a further revised text of article 5 (see A/C.6/54/WG.1/CRP.15/Rev.3).

172. In introducing the revised text at the ninth meeting held on 6 October 1999, the Chairman noted that paragraph 1 had been replaced with the text contained in document A/C.6/54/WG.1/CRP.29, which contained the consensus text emanating from the informal consultations.

173. While no changes were made to paragraph 2, the word "measures" in paragraph 3 was replaced with "and dissuasive criminal, civil or administrative sanctions". Furthermore, the following sentence was added at the end of the provision: "Such sanctions may include monetary sanctions".

174. No comments were made on article 5 during the ensuing discussion.

#### Consideration on the basis of document A/C.6/54/WG.1/CRP.35

175. At the 10th meeting of the Working Group, on 7 October 1999, the Chairman pointed out, in reference to the revised text prepared by the Friends of the Chairman (A/C.6/54/WG.1/CRP.35), that the phrase "domestic legal system" in paragraph 1 had to be replaced with "domestic legal principles". That change was effected in the following version of the text (A/C.6/54/WG.1/CRP.35/Rev.1), which was tabled before the Working Group at its 11th meeting, on 8 October 1999.

### Article 6

#### Consideration on the basis of the discussion paper submitted by the Bureau on articles 3 to 25[2]

176. At the 8th meeting of the Working Group, held on 5 October 1999, the proposal was made to add a new paragraph 2 to the provision along the lines of the proposal contained in document A/AC.252/1999/WP.17, submitted to the Ad Hoc Committee in March 1999. It was explained that the proposed additional clause would cover the complicity of States in contracts or agreements to commit an offence under the draft convention, and would create an obligation on States not to enforce such agreements. It was argued that such a provision would be in line with the need for a comprehensive legal framework to combat terrorism.

177. While some support was expressed for the proposal, the observation was made that a reference to the responsibility of States was not appropriate in the draft convention.

## Article 7

### Consideration on the basis of the discussion paper submitted by the Bureau on articles 3 to 25[2]

178. The consideration of article 7 was first undertaken by the Working Group on the basis of the text submitted by the Bureau, contained in annex I.A to the report of the Ad Hoc Committee.[4] In introducing the article, the Chairman noted that the Ad Hoc Committee had undertaken its second reading of article 7 on the basis of the revised text contained in document A/AC.252/1999/WP.51.[3]

179. It was observed that the text proposed by the Bureau did not amend paragraph 1. Furthermore, in paragraph 2, the phrase "carrying out of an attack" in subparagraph (a), was replaced with "carrying out of an offence referred to in article 2, paragraph 1, subparagraph (a) or (b)", so as to address concerns regarding the use of the word "attack". New subparagraph (b) corresponded to subparagraph (c) of document A/AC.252/1999/WP.51. The same amendment made in subparagraph (a) relating to the words "carrying out of an attack", was made in subparagraph (b). New subparagraph (c) corresponded to subparagraph (d) of document A/AC.252/1999/WP.51. It too was slightly reformulated in line with the preceding subparagraphs. New subparagraph (d) corresponded to former subparagraph (b) of document A/AC.252/1999/WP.51. Subparagraph (e) was a new paragraph, based on a proposal made in the Ad Hoc Committee, and was intended to cover the case of an offence committed on board an aircraft operated by the Government of a State.

180. While no changes were made to paragraph 3, an editorial change was made to paragraph 4, whereby the words "of the present article" were deleted.

181. In paragraph 5, the phrase "terms and conditions" was replaced by "modalities".

182. No change was made to paragraph 6.

#### General comments

183. During the debate in the Working Group on the text, the view was expressed that article 7 did not apply to legal entities, only to natural persons.

#### Paragraph 1

184. A proposal was made to change the reference in the *chapeau* of the paragraph from "shall" to "may", so as to take into account the predominance of territoriality in international law as the basis for criminal jurisdiction, especially in light of the reference to nationality in subparagraph (c).

185. In relation to subparagraph (b), it was reiterated that the provisions of the 1982 United Nations Convention on the Law of the Sea relating to the jurisdiction of the coastal State over territorial waters would apply. A further view was expressed that the retention of subparagraph (b), as drafted, would be useful as it would allow the flag State to exercise its jurisdiction over the vessel while in the territorial waters of another State. It was also pointed out that the provision was based on a similar provision in the International Convention for the Suppression of Terrorist Bombings.

#### Paragraph 2

186. A proposal was made to delete the reference to "or resulted in" contained in subparagraphs (a) to (c), with a view to narrowing the scope of the provision. In that regard, it was also suggested that subparagraphs (a) to (c) could be merged into one subparagraph.

187. It was observed that the reference to "in the territory", in subparagraph (a), was already covered by paragraph 1, subparagraph (a), and was not found in the original proposal by the French delegation.[5]

188. With regard to subparagraph (b), it was suggested that the phrase "an embassy or" be deleted, since it was already covered within the legal meaning of the terms "diplomatic premises". As to subparagraph (e), it was suggested that the provision be deleted.

#### Paragraph 6

189. A suggestion was made to reformulate the text in accordance with the proposal submitted to the meeting of the Ad Hoc Committee in March 1999, as contained in document A/AC.252/1999/WP.58. It was argued that the text under consideration was too broad and could allow for extraterritorial exercise of jurisdiction by States. As such, it could benefit from the inclusion of qualifying language referring to the relevant rules and principles of international law (see A/C.6/54/WG.1/CRP.24). Conversely, an observation was made that the provision was based on similar provisions in other international conventions and that it was not intended to create new rights or obligations.

**Consideration on the basis of the revised texts of articles 5, 7, 8, 12 and 17, prepared by the Friends of the Chairman (A/C.6/54/WG.1/CRP.15)**

190. In introducing the revised text for article 7, prepared by the Friends of the Chairman on the basis of the discussion in the Working Group, the Chairman noted that the only modification made in the article related to paragraph 2, subparagraph (b), where the words "an embassy or other" were deleted to maintain consistency with the 1961 Vienna Convention on Diplomatic Relations. Furthermore, it was observed that paragraph 2, subparagraph (e), had been retained in the absence of a clear preference for deleting it.

**Paragraph 2, subparagraph (e)**

191. In the debate that followed the Chairman's introduction of the revised text, the observation was made that the provision should be clarified since it gave rise to questions regarding concurrent jurisdiction. In response, a preference was expressed for retaining it since State aircraft, such as military, police and customs aircraft were not covered by paragraph 1, subparagraph (b), while the vessels contemplated in paragraph 1, subparagraph (b) included both commercial and government vessels.

**Paragraph 6**

192. The view was expressed that the provision should be deleted or clarified further, since it could allow for a breach of international law. Conversely, a view was expressed that the provision was useful, since it recognized that the draft convention was not intended to limit the authority of States to exercise jurisdiction beyond that provided for by the convention.

**Consideration on the basis of the revised texts of articles 5, 7, 8, 12 and 17, prepared by the Friends of the Chairman (A/C.6/54/WG.1/CRP.15/Rev.1)**

193. Following the discussion in the Working Group on the revised text in document A/C.6/54/WG.1/CRP.15), the Friends of the Chairman prepared a further revision, taking into account the suggestions made in the Working Group and various texts emanating from informal consultations. The new text was contained in document A/C.6/54/WG.1/CRP.15/Rev.1, and was introduced at the 11th meeting, on 4 October 1999.

194. In observing that no changes had been made to article 7, the Chairman pointed out that paragraph 2, subparagraph (e), had been retained in light of the discussions in the Working Group, and that paragraph 6 had not been modified, pending the outcome of informal discussions on the provision.

195. During the debate that followed, support was expressed for retaining the article as presented by the Friends of the Chairman.

**Consideration on the basis of the revised texts of articles 5, 7, 8, 12 and 17, prepared by the Friends of the Chairman (A/C.6/54/WG.1/CRP.15/Rev.2)**

196. Following the discussion in the Working Group on the text of article 7, contained in document A/C.6/54/WG.1/CRP.15/Rev.1, a new set of revised texts was prepared by the Friends of the Chairman (see A/C.6/54/WG.1/Rev.2).

197. In introducing the new texts, the Chairman noted that no changes had been made to article 7.

**Paragraph 6**

198. During the discussion that followed, the Working Group's attention was drawn to the proposal in document A/C.6/54/WG.1/CRP.24 to add a phrase at the beginning of the paragraph to make it clear that paragraph 6 was not intended to alter international law.

**Consideration on the basis of the revised texts of articles 5, 7, 8, 12 and 17, prepared by the Friends of the Chairman (A/C.6/54/WG.1/CRP.15/Rev.3)**

199. In response to the discussions in the Working Group on the basis of the texts in document A/C.6/54/WG.1/CRP.15/Rev.2, the Friends of the Chairman prepared a further revised text (see A/C.6/54/WG.1/CRP.15/Rev.3).

200. In introducing the revised text at the 9th meeting, held on 6 October 1999, the Chairman noted that no changes had been made to article 7, pending the outcome of informal consultations on, particularly, paragraph 6.

**Consideration on the basis of the revised text prepared by the Friends of the Chairman (A/C.6/54/WG.1/CRP.35)**

201. Reference to article 7 was made during the consideration of the revised text of the draft articles, prepared by the Friends of the Chairman, during the 10th

meeting of the Working Group, on 7 October 1999, at which time the general observation was made that the text was still the subject of informal consultations.

202. At that meeting, it was noted in relation to paragraph 6 that the exercise of national terms of reference should be applied in conformity with international law. If not, the provision could lead to actions considered unacceptable under international law.

203. A further reference was made to the proposal for paragraph 6 contained in document A/AC.252/1999/WP.58.

#### Consideration of the text for paragraph 6 negotiated during informal consultations and included in the revised text prepared by the Friends of the Chairman (A/C.6/54/WG.1/CRP.35/Rev.1)

204. At the 11th meeting of the Working Group, on 8 October, the coordinator of the informal consultations on paragraph 6 introduced the text negotiated during those consultations, which had been included in the revised text prepared by the Friends of the Chairman (A/C.6/54/WG.1/CRP.35/Rev.1).

205. Paragraph 6, as contained in the revised text, was orally amended by the coordinator to reflect the agreement in the informal consultations to add the following phrase, based on the proposal in document A/C.6/54/WG.1/CRP.24, at the beginning, "[w]ithout prejudice to the norms of general international law".

### Article 8

#### Consideration on the basis of the discussion paper submitted by the Bureau on articles 3 to 25[2]

206. The Working Group commenced its consideration of article 8 during the current session first on the basis of the text submitted by the Bureau, contained in annex I.A of the report of the Ad Hoc Committee.[4] In introducing the article, the Chairman recalled that the Ad Hoc Committee had undertaken its second reading on the basis of the revised text contained in document A/AC.252/1999/WP.45.[5]

207. In explaining the changes made by the Bureau to that text, the Chairman noted that the following modifications were made to paragraph 1, so as to align it with the French language version: the word "goods" was replaced with "property"; the phrase "designed to be" was substituted with "intended to be"; the words "to allow" in the first line were deleted; and the word "the" was inserted before "identification". The phrase "set forth in article 2" was added so as to clarify which offences were being referred to. The square brackets around the phrase "as well as the proceeds derived from such offences" were also deleted, so as expand the scope of the provision.

208. With respect to paragraph 2, the reference to "in accordance with its fundamental legal principles to permit" was deleted by the Bureau, in line with the prevailing trend of the discussions in the Ad Hoc Committee. Furthermore, the phrase "and the proceeds derived from such offences" was added at the end of the paragraph, so as to align it with paragraph 1.

209. Paragraph 3 remained the same, with the exception of the deletion of the square brackets around the words "proceeds or", thus aligning the provision with the prior paragraphs.

210. In paragraph 4, the opening phrase "[s]ubject to its domestic law" was deleted. The word "indemnify" was replaced by the word "compensate". A further editorial change was made to the reference to "within the ambit of this Convention", which was replaced with "referred to in article 2, paragraph 1, subparagraph (a) or (b)".

211. No change was made to paragraph 5.

#### Paragraphs 1 and 2

212. During the debate in the Working Group on the Bureau's proposed text, it was noted that the word "property" was redundant, since it was already envisaged in the concept of "funds", as defined in article 1. Thus, it could be deleted.

213. The view was expressed that the phrase "or intended to be used" should be deleted, since, in practice, it would be difficult to prove the intention to use funds to commit an offence set forth in article 2. Furthermore, the view was expressed that while the reference to intended use was included in article 5, paragraph 1 (b), of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, such a reference was not appropriate in the context of the current draft convention, since the possession of funds (as opposed to drugs) did not, per se, present any danger. That view was opposed in the Working Group. A further proposal was made, by way of resolving the issue, to replace the term "intended" with "attempted".

214. The remark was made that the interpretation given to the phrase "offences set forth in article 2" by the Bureau — namely, that it was a reference only to those financing

offences established under the draft convention — was too narrow. The original text of article 8 also covered the offences listed in the annex. Thus, it was proposed that the text under consideration cover both types of offences.

### Paragraph 3

215. A suggestion was made that the term "concerned" be added after the phrase "each State Party", so as to specify the States which may consider the agreements envisaged in the provision.

216. In line with a similar proposal raised in the context of paragraphs 1 and 2, it was suggested that the phrase, "property, or funds derived from the sale of such proceeds or property" be replaced with the term "funds", so as to read "of such proceeds or funds". A further proposal was made to replace the same final phrase of the provision with the following formulation, "of any assets derived from or obtained, directly or indirectly, through the commission of an offence set forth in article 2", derived from article 1 (p) of the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. It was explained that in doing so the substance of the provision would be clarified. This suggestion was opposed in the Working Group on the grounds that the paragraph in question was more in line with the two preceding paragraphs.

### Paragraph 4

217. A proposal was made to replace the phrase "shall consider" with "may give consideration", so as to allow for greater discretion in establishing mechanisms for compensation. This view was opposed in the Working Group where it was pointed out that stronger language was required to encourage the provision of compensation for victims of the crimes in question would be compensated.

218. The view was also expressed that the reference to "criminal acts resulting from the commission of" was vague, and consequently could be deleted.

219. It was also suggested that the scope of the provision be extended to include compensation for the victims of the offences listed in the annex.

### Paragraph 5

220. The observation was made that the phrase "third parties" in the provision should be clarified, since it could be interpreted to refer to States as well.

### New paragraph 6

221. A proposal was made to include a new paragraph 6 with a view to including a reference to domestic law, in line with paragraph 9 of article 5 of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (see A/C.6/54/WG.1/CRP.8).

## Consideration on the basis of the revised texts of articles 5, 7, 8, 12 and 17, prepared by the Friends of the Chairman (A/C.6/54/WG.1/CRP.15)

222. A revised text for article 8, based on the discussions in the Working Group, was prepared by the Friends of the Chairman, and issued as document A/C.6/54/WG.1/CRP.15. In introducing the revised text at the sixth meeting of the Working Group, on 30 September 1999, the Chairman noted that the Friends of the Chairman had not deemed it appropriate at that stage to consider the various proposals that had been made in regard to paragraphs 1, 2 and 3, pending agreement on the final wording of articles 1 and 2.

223. With regard to paragraph 4, it was pointed out that the phrase "criminal acts resulting from the commission of" had been deleted, in line with the prevailing view of the debate in the Working Group.

224. As to paragraph 5, it was observed that the Working Group would return at a later stage to consider the phrase "third parties".

### Paragraphs 1 and 2

225. It was proposed to delete the phrase "intended to be used" in both paragraphs; it was considered to be ambiguous.

226. In relation to the phrase "proceeds derived from such offences", it was recalled that a proposal had been made (see A/C.6/54/WG.1/CRP.6) to include a definition of the concept of profiting from the offence in article 1. It was further noted that the definition proffered in that proposal conformed generally with the definition found in the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. Conversely, the proposal to include such a definition was opposed in the Working Group.

### Paragraph 3

227. A suggestion was made to add the term "concerned" after "States Parties". The suggestion was opposed in the Working Group, where it was pointed out that the requirement in the paragraph was a general one, requiring States Parties to consider entering into such arrangements

in advance of any actual cases. Thus, it would not be possible to ascertain who the States Parties "concerned" would be.

**Paragraph 4**

228. A proposal to add a sentence at the end of the paragraph containing a savings clause relating to the rights of victims under the generally applicable law of the State was submitted to the Working Group (see A/C.6/54/WG.1/CRP.17).

**Paragraph 5**

229. Concern was again expressed that the phrase "third parties" could be interpreted to include the States alluded to in the prior paragraphs. During the ensuing debate, proposals were made to replace the term with "third persons", "other persons, natural or legal" or "others acting in good faith" (see A/C.6/54/WG.1/CRP.24). The view was also expressed that the provision should be retained in its current form, since the phrase "third parties" was generally accepted to include States and natural or other legal persons.

**New paragraph 6**

230. Support was once again expressed for the proposal to add, as a new paragraph 6, a savings clause in favour of the domestic law of each State Party (see A/C.6/54/WG.1/CRP.8). In supporting the proposal, the observation was made in the Working Group that the new text was based on article 5, paragraph 9, of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. It was also noted that its inclusion would serve to allay concerns among some regarding the possibility of forfeiture of funds prior to a conviction.

231. The new paragraph was opposed in the Working Group, where it was pointed out that it would narrow the scope of article 8 too much and that it would undermine the flexibility built into paragraphs 1 to 4. Indeed, it was pointed out that the new paragraph was not necessary, since a qualifier was already present in each paragraph of article 8. In that regard, a proposal was made to refine the language of new paragraph 6, by replacing the words "domestic law" with the phrase "fundamental legal principles". It was argued that that would serve to raise the threshold in the provision. In terms of a further observation, it was noted that the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances utilized the words "domestic law".

232. In terms of a further view, the new paragraph would have to be redrafted so as to be consistent with article 5.

**Consideration on the basis of the revised texts of articles 5, 7, 8, 12 and 17, prepared by the Friends of the Chairman (A/C.6/54/WG.1/CRP.15/Rev.1)**

233. Following the discussion in the Working Group on the revised text in document A/C.6/54/WG.1/CRP.15, the Friends of the Chairman prepared a further revision, taking into account the suggestions made in the Working Group and various texts emanating from informal consultations. The new text was contained in document A/C.6/54/WG.1/CRP.15/Rev.1, and was introduced at the 7th meeting, on 4 October 1999.

234. In regard to paragraphs 1 and 2, the Chairman noted that no substantial changes had been made, in view of their linkage to articles 1 and 2, which were still under negotiation. The only exception was the insertion of the phrase "in accordance with its domestic legal principles" after the term "measures", in the first line of each paragraph. That modification was made in lieu of the introduction of a new paragraph 6, as proposed in document A/C.6/54/WG.1/CRP.6.

235. With regard to paragraph 3, the word "concerned" was inserted after "each State Party".

236. No changes were made to paragraphs 4 and 5.

237. As regards the proposed definition of "proceeds", the definition was included on the understanding that its formulation was the result of informal consultations. It was observed that the definition was based on article 1 (p) of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

238. During the debate that followed, an observation was made that the phrase "domestic legal principles" should be standardized throughout the entire draft convention. In that regard, a preference was expressed for following formulations: "domestic laws", "domestic legal norms", or "its laws and legal procedures". It was also pointed out that a distinction could be drawn between "its laws", when referring to a concept shared by all legal systems, and "domestic legal principles", when alluding to a particular concept which was viewed differently by States.

**Paragraph 1**

239. In relation to paragraph 1, it was reiterated that the term "property" could be deleted, since it was already encompassed within the definition of "funds".

240. While support was expressed for deleting the phrase "or intended to be used", such deletion was opposed in the Working Group.

241. A further proposal was made to delete the phrase "in any manner".

**Paragraph 2**

242. The observation made in regard to the use of the word "property" in paragraph 1 was made in the context of paragraph 2.

243. Various views were expressed regarding the phrase "or intended to be used". While some supported its deletion, since it implied forfeiture prior to a conviction, others noted that if it were to be retained, then the phrase "in accordance with its domestic legal principles" would also have to be retained. It was observed further that the phrase should be retained, because the draft convention recognized financing as a main offence, under article 2, and therefore "intended" use was important. Others noted that retaining such a provision was commensurate with the approach of the draft convention, which placed emphasis on prevention. Furthermore, it was noted that an intention requirement already existed in article 2.

244. In a further proposal, the phrase "intended to be used" would be replaced with "destined to be used" or "destined for use". That approach was opposed in the Working Group. Other suggestions to replace the phrase "intended to be used" included "in order to commit", "which they start to use for the commission of the crime", "attempted to be used", "other means attempted or used", and "used or allocated".

245. It was stated that the phrase "set forth in article 2", should be replaced with "referred to in article 2".

246. Support was further expressed for adding the words "and legislation" after "domestic principles", and for replacing "domestic legal principles" with "domestic laws".

247. The view was also expressed that paragraph 2 was redundant and could be deleted.

**Paragraph 3**

248. While a preference for retaining the text of the provision as proposed by the Friends of the Chairman was expressed, a suggestion was also made to replace the phrase "proceeds or property or funds" with "funds, other means or proceeds thereof". That proposal was opposed in the Working Group.

249. In a further proposal, the term "concerned" could be deleted.

**Paragraph 5**

250. The attention of the Working Group was drawn to the proposal in document A/C.6/54/WG.1/CRP.24, whereby the words "third parties" would be replaced with "others".

**Proposed definition of "proceeds"**

251. In response to a request by the Chairman that delegations comment on the proposed definition of "proceeds", the view was expressed that it was superfluous and could lead to confusion.

252. It was observed that the proposed text for the definition could be amended as follows: the phrase "established in accordance with article 2" could be replaced with "as set forth in article 2" for consistency in citing the offences in article 2, and "property" could be replaced with "funds", because, although "property" was defined in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, it was subsumed under the definition of "funds" in the current draft convention.

**Consideration on the basis of the revised texts of articles 5, 7, 8, 12 and 17, prepared by the Friends of the Chairman (A/C.6/54/WG.1/CRP.15/Rev.2).**

253. Following the discussion in the Working Group on the text of article 8, contained in document A/C.6/54/WG.1/CRP.15/Rev.1, a new set of revised texts was prepared by the Friends of the Chairman (see A/C.6/54/WG.1/Rev.2).

254. In introducing the new text, the Chairman noted that the word "property" had been deleted from both paragraphs 1 and 2, in view of its inclusion within the scope of the definition of "funds" in article 1. The words "or intended to be used" were retained, pending further consultations among interested delegations. The same applied to the words "in any manner" following "intended to be used" in paragraph 1.

255. Concerning paragraph 3, the only change made was to replace the phrase "proceeds or property or funds derived from the sale of such proceeds or property" with "funds, other means or proceeds thereof", so as to align the text with paragraph 1.

256. As to the proposed definition "proceeds", a new text based on informal consultations was presented. In that text, the words "property or other type of profit" had been replaced with "funds or other kinds of benefits". Furthermore, consistent with the rest of the text of the draft convention, the words "established in accordance with

article 2, paragraph 1" were replaced with "set forth in article 2".

**Paragraph 1**

257. In reference to the words "other means", a suggestion was made that they be deleted, since the concept was covered within the definition of "funds".

258. Support was reiterated for the deletion of the phrase "or intended to be used".

**Paragraph 2**

259. An observation was made that the word "forfeiture" could be replaced with "confiscation" which was the term used in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

260. While some preferred the deletion of "intended to be used", others supported its inclusion. In that regard, the proposal to replace the phrase with "destined to be used" was reiterated.

261. A proposal to replace the words "set forth" with "referred to", by way of compromise on the question of "intended to be used", was opposed in the Working Group.

262. The proposal to delete the phrase "other means" in paragraph 1 was made in connection with paragraph 2.

**Paragraph 5**

263. While suggestions were made to replace the term "parties" with "persons" and to define the term to include legal entities, support was expressed for retaining the phrase "third parties".

**Proposed definition of "proceeds"**

264. A suggestion was made to delete the phrase "other kinds of benefits", since the term "funds" was sufficiently broad. That suggestion was opposed in the Working Group.

**Consideration on the basis of the revised texts of articles 5, 7, 8, 12 and 17, prepared by the Friends of the Chairman (A/C.6/54/WG.1/CRP.15/Rev.3)**

265. Following the discussion in the Working Group on the text contained in document A/C.6/54/WG.1/CRP.15/Rev.2, the Friends of the Chairman prepared a further revised text (see A/C.6/54/CRP.15/Rev.3).

266. The Chairman introduced the revised text at the ninth meeting of the Working Group, held on 6 October 1999. He pointed out that, in regard to paragraphs 1 and 2, the words "intended to be used" were retained, pending the results of informal consultations. Furthermore, the words "other means" in paragraphs 1 and 2 were deleted, on the grounds that the term "funds", as defined in the draft convention, was sufficiently broad.

267. Paragraph 3 was orally amended to delete the phrase "other means", in line with paragraphs 1 and 2.

268. Paragraph 5 was not altered.

269. With respect to the proposed definition of "proceeds", the phrase "other kinds of benefits" was deleted, so as to be consistent with the definition of "funds".

**Paragraphs 1 and 2**

270. During the ensuing debate, the proposal to replace "or intended to be used" with "or calculated" was reiterated.

**Consideration on the basis of the revised text prepared by the Friends of the Chairman (A/C.6/54/WG.1/CRP.35)**

271. The text of article 8 was next considered at the 10th meeting of the Working Group, on 7 October 1999, in the context of a revised text for the draft articles prepared by the Friends of the Chairman (see A/C.6/54/WG.1/CRP.35).

272. During the ensuing debate, it was noted that the proposed definition for the term "proceeds" had been inadvertently retained under article 8 and should have been deleted since it had been included in article 1.

273. At the same meeting, the coordinator of the informal consultations on paragraphs 1 and 2 of article 8 reported on the outcome of those negotiations. It was noted that it had been agreed to replace the words "or intended to be used", in paragraph 2, with "allocated for the purpose of", as had been previously suggested.

274. The observation was subsequently made that the same change could be made to paragraph 1.

275. The text of the article, as amended, was included in the revised text prepared by the Friend of the Chairman (A/C.6/54/WG.1/CRP.35/Rev.1), which was tabled before the Working Group at its 11th meeting, on 8 October 1999.

## Article 12

### Consideration on the basis of the discussion paper submitted by the Bureau on articles 3 to 25[2]

276. The Working Group undertook its consideration of the article on the basis of the text submitted by the Bureau, contained in annex I.A of the report of the Ad Hoc Committee.[4] In introducing the article, the Chairman noted that the Ad Hoc Committee had undertaken its second reading of article 12 on the basis of the revised text contained in document A/AC.252/1999/WP.45.[3]

277. In regard to paragraph 1 of the Bureau's text, it was observed that the word "criminal" was inserted before "investigations", thus excluding the possibility of mere speculative investigations, which some delegations had concerns about. The word "brought" before "in respect of" was deleted. The phrase "referred to in article 2" was replaced with "set forth in article 2", so as to conform with the agreed upon method of referring to the financing offences in article 2. The phrase "evidence at their disposal" was replaced by "evidence in their possession".

278. While paragraph 2 had been reformulated, it still retained the substance of paragraph 3 in the corresponding text in document A/AC.252/1999/WP.45.

279. The Bureau decided to include a new paragraph 2 *bis* concerning the misuse of information obtained under the draft convention, in response to the suggestion to add a provision similar to that found in article 7, paragraph 13, of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

280. Paragraph 3 corresponded to paragraph 2 of the text in document A/AC.252/1999/WP.45, with the exception of the expansion of the cross-reference in the first line to paragraph 2, which served to expand the scope of the provision.

281. The Bureau did not make any changes to paragraph 4.

#### Paragraph 1

282. During the discussion in the Working Group on the text proposed by the Bureau, the suggestion was made to replace the phrase "in their possession" with "at their disposal", on the grounds that it would be in line with article 10, paragraph 2, of the International Convention for the Suppression of Terrorist Bombings.

283. A further proposal was made to delete the reference to "criminal" investigations or to add a reference to "civil and administrative" into the provisions, so as not to limit mutual cooperation to criminal investigations, since the provision also envisaged cooperation in administrative matters. The suggestion was opposed in the Working Group on the grounds, *inter alia*, that the lifting of bank secrecy laws was not acceptable in the context of mutual cooperation in civil and administrative matters.

#### New paragraph 2 *ter*

284. It was proposed to include a new paragraph 2 *ter* establishing a permissive regime of mutual assistance in civil and administrative matters, which would contain the following formulation:

> "[e]ach State Party may give consideration to establishing mechanisms to share with other State Parties, on a regular or case-by-case basis, information or evidence needed for civil or administrative procedures initiated under this Convention".

285. The proposed inclusion of a new paragraph was opposed in the Working Group on the same grounds as for the objection to the deletion of the reference to "criminal" in the context of paragraph 1.

#### Paragraph 3

286. While support was expressed for retaining the provision in its present form, the concern was expressed that the cross-reference to paragraph 2 could be interpreted to undermine the obligation in that paragraph regarding bank secrecy. As such, the cross-reference could be deleted. Conversely, a preference was expressed in the Working Group for retaining the cross-reference to paragraph 2.

287. The suggestion was made to add a reference to "or information exchange" after "assistance" so as to expand the scope of the provision to include treaties or other arrangements dealing specifically with information exchange.

288. It was further proposed that the element of reciprocity be added to the mechanism envisaged in the provision by adding at its end the phrase "provided reciprocity is granted".

289. It was also suggested that a reference to "their domestic law" be added to the first sentence.

#### Paragraph 4

290. The view was expressed that a reference to extradition in article 12, which dealt with mutual assistance, was inappropriate since extradition was within the purview of

article 11. As such, it was proposed to delete the phrase "for extradition or" from the provision.

291. Conversely, it was pointed out that the reference to extradition also existed in paragraph 1, which dealt with mutual legal assistance in the context of extradition. It was also noted, with regard to the reference in paragraph 4, that retaining it within the confines of article 12 did not create a conflict with article 11.

292. Others supported its deletion on the understanding that a similar provision would be added to article 11, so as to preserve the prohibition on refusing extradition on the grounds that it concerned a fiscal offence.

293. As to the formulation of paragraph 4, the suggestion was made to reinsert the reference to "sole" before the term "ground" which existed in the original text submitted by the sponsor delegation.[5]

294. The view was also expressed that the second sentence could be deleted, as it was redundant.

295. A further preference was expressed for retaining the provision as it was presented.

**Consideration on the basis of the revised texts of articles 5, 7, 8, 12 and 17 prepared by the Friends of the Chairman (A/C.6/54/WG.1/CRP.15)**

296. Following the discussion in the Working Group, the Friends of the Chairman prepared a revised text for article 12, contained in document A/C.6/54/WG.1/CRP.15. Introducing the text, the Chairman pointed to the inclusion of a new paragraph 2 *ter*, which was of a permissive nature, and which concerned the exchange of information in cases dealing with the civil or administrative liability of legal entities.

297. As regards paragraph 3, the words "or information exchange" were inserted after the phrase "mutual legal assistance" with a view to reflecting the existing practice in a number of States.

298. Following the debate on paragraph 4, the Friends of the Chairman decided to recast it as new article 12 *bis* (see below).

**Paragraph 2 *ter***

299. During the debate on the revised text, the proposal was made to add the term "criminal" before "civil" so as to include mutual legal assistance in the context of a criminal offence committed by a legal entity under article 5.

**Paragraph 3**

300. It was recalled that a preference had been expressed for deleting the cross-reference to paragraph 2, since it could be read as undercutting paragraph 2. However, it was noted that the cross-reference could be kept on the understanding that paragraph 3 merely provided the procedural context for the obligations under paragraphs 1 and 2. Support was expressed in the Working Group for the latter interpretation of the provision.

301. The suggestion was also made to replace at the end of the paragraph the words "their domestic law" with "the domestic law of the requested State".

**Consideration on the basis of the revised texts of articles 5, 7, 8, 12 and 17 prepared by the Friends of the Chairman (A/C.6/54/WG.1/CRP.15/Rev.1)**

302. Following the discussion in the Working Group on the revised text in document A/C.6/54/WG.1/CRP.15, the Friends of the Chairman prepared a further revision, taking into account the suggestions made in the Working Group and various texts emanating from informal consultations. The new text was contained in document A/C.6/54/WG.1/CRP.15/Rev.1, and was introduced at the 7th meeting, on 4 October 1999.

303. In regard to paragraph 2 *ter*, the Chairman noted that the only change made to the paragraph was the addition of the word "criminal" before "civil or administrative", so as to address the concern that the provision might not encompass legal entities in certain cases.

304. While no modification was made to paragraph 3, the cross-reference to paragraph 2 was retained on the understanding that paragraph 3 only related to procedural matters and was not intended to undermine the bank security provision in paragraph 2. With regard to the proposal to add the reference to the "domestic law of the requested State", the Friends of the Chairman considered the concept as already being covered in the text of paragraph 3.

**Consideration on the basis of the revised texts of articles 5, 7, 8, 12 and 17 prepared by the Friends of the Chairman (A/C.6/54/WG.1/CRP.15/Rev.2 and A/C.6/54/WG.1/CRP.15/Rev.3)**

305. Following the discussion in the Working Group on the text of article 12, contained in document A/C.6/54/WG.1/CRP.15/Rev.1, two sets of revised texts were prepared by the Friends of

the Chairman (see A/C.6/54/WG.1/CRP.15/Rev.2 and A/C.6/54/WG.1/CRP.15/Rev.3), and discussed at the 8th and 9th meetings of the Working Group, on 5 and 6 October 1999, respectively.

306. In introducing document A/C.6/54/WG.1/CRP.15/Rev.2, the Chairman noted that the text of article 12 had not been amended. No observations on article 12 were subsequently made during the following discussion.

307. Similarly, no changes were made to article 12 in the text contained in document A/C.6/54/WG.1/CRP.15/Rev.3.

#### Paragraph 2 *bis*

308. During the discussion on that text, the proposal was made in the Working Group to add the phrase "or for any purpose" after the word "proceedings", and to delete the word "or" before "proceedings". It was argued that the proposed text would cover the unauthorized disclosure of the information in question. This proposal was opposed in the Working Group.

### Article 12 *bis*

#### Consideration on the basis of the revised texts of articles 5, 7, 8, 12 and 17 prepared by the Friends of the Chairman (A/C.6/54/WG.1/CRP.15)

309. Article 12 *bis* had been proposed by the Friends of the Chairman, in their first revised text of article 12, contained in document A/C.6/54/WG.1/CRP.15. It incorporated the prior paragraph 4 of article 12,[6] with one modification, namely, the insertion of the word "sole" before "ground", towards the end of the second sentence.

310. During the debate on the first revision of articles 12 and new 12 *bis*, the suggestion was made to replace the phrase "[a]ccordingly, States Parties may not" with "No State Party can". The deletion of the word "[a]ccordingly" was supported in the Working Group.

#### Consideration on the basis of the revised texts of articles 5, 7, 8, 12 and 17 prepared by the Friends of the Chairman (A/C.6/54/WG.1/CRP.15/Rev.1)

311. Following the discussion in the Working Group on the revised text in document A/C.6/54/WG.1/CRP.15, the Friends of the Chairman prepared a further revision, taking into account the suggestions made in the Working Group and various texts emanating from informal consultations. The new text was contained in document A/C.6/54/WG.1/CRP.15/Rev.1, and was introduced at the 7th meeting, on 4 October 1999.

312. The Chairman pointed out that the word "[a]ccordingly" at the beginning of the second line had been deleted, as had been agreed during the previous discussion of the article.

#### Consideration on the basis of the revised texts of articles 5, 7, 8, 12 and 17 prepared by the Friends of the Chairman (A/C.6/54/WG.1/CRP.15/Rev.2 and A/C.6/54/WG.1/CRP.15/Rev.3)

313. Following the discussion in the Working Group on the text of article 12 *bis*, contained in document A/C.6/54/WG.1/CRP.15/Rev.1, two sets of revised texts were prepared by the Friends of the Chairman (see A/C.6/54/WG.1/Rev.2 and A/C.6/54/WG.1/Rev.3), and discussed at the 8th and 9th meetings of the Working Group, on 5 and 6 October 1999, respectively.

314. No changes were made to the article in either texts.

315. During the discussion of the provision, as contained in document A/C.6/54/WG.1/CRP.15/Rev.2, the observation was made that regard should be had for the negotiations under way in Vienna on the draft United Nations Convention against Transnational Organized Crime. The same point was raised at the following meeting, in the context of the discussion of the text of the article contained in document A/C.6/54/WG.1/Rev.3. At that meeting the concern was expressed that the provision could be abused. As such, it was proposed to add the phrase "and qualified as such by the States Parties" after "set forth in article 2". The proposal was opposed in the Working Group on the grounds that it would introduce an element of discretion which could undermine the application of the provision.

#### Consideration on the basis of the revised text prepared by the Friends of the Chairman (A/C.6/54/WG.1/1999/CRP.35)

316. The Working Group next discussed the text for article 12 *bis* in the context of its consideration of the revised text of the draft articles prepared by the Friends of the Chairman, as reflected in document A/C.6/54/WG.1/CRP.35.

317. The discussion was held at the Working Group's 10th meeting, on 7 October 1999, at which time the observation was made that the provision should be clarified so as to avoid diverting the aim of the draft convention to combating

fiscal offences instead of offences arising out of the financing of terrorism.

318. The text of the provision was retained in the revised text prepared by the Friends of the Chairman (A/C.6/54/WG.1/CRP.35/Rev.1), which was placed before the Working Group at its 11th meeting, on 8 October 1999.

## Articles 13 and 14

319. At the 8th meeting of the Working Group, the view was expressed that articles 13 and 14 could be deleted, in the light of the negotiations on articles 1 and 2, as had been suggested in the proposal submitted to the meeting of the Ad Hoc Committee in March 1999 (see A/AC.252/1999/WP.55).

320. A preference for retaining articles 13 and 14 in the text was expressed.

## Article 17

### Consideration on the basis of the discussion paper submitted by the Bureau on articles 3 to 25[2]

321. Article 17 was considered by the Working Group on the basis of the text submitted by the Bureau contained in annex I.A of the report of the Ad Hoc Committee.[4] In introducing the article, the Chairman noted that the Ad Hoc Committee had undertaken its second reading of the article on the basis of the revised text contained in document A/AC.252/1999/WP.47.[3]

322. The Chairman explained that the Bureau had modified subparagraph (a) of paragraph 1 by inserting the word "illegal" before "activities" so as to align the English text with the original French proposal. Furthermore, the reference to "groups" was deleted since it fell within the definition of "organization" contained in article 1. In regard to subparagraph (b), the phrase "improve the identification of", in the *chapeau*, was replaced with "utilize the most efficient measures for the identification of", since that initial formulation implied that some existing measures required improvement. It was also observed that the two sentences in subparagraph (b) (i), as presented in document A/AC.252/1999/WP.47, were merged to form a new subparagraph (b) (i). Subparagraph (b) (ii) was reformulated slightly with a view to clarifying the initial text. Subparagraph (b) (iii) contained a reformulation of the corresponding initial version of the text, with the addition of a specific reference to domestic and international transactions. No changes were made to subparagraphs (c) and (d).

323. With regard to paragraph 2, subparagraph (a), the phrase "offences established in accordance with article 2 of the Convention" were replaced with "offences set forth in article 2", so as to align the text with the *chapeau* of article 2. In regard to the *chapeau* in subparagraph (b), the reference to "offences established in accordance with article 2 of the Convention" was replaced with "offences set forth in article 2". Furthermore, the phrase "being involved in offences referred to in this Convention", in subparagraph (b) (i), was replaced with the words "being involved in such offences". No change was made to subparagraph (b) (ii).

324. The Bureau had decided not to include paragraph 3, contained in document A/AC.252/1999/WP.47, since it referred to State responsibility, which was a matter for general international law.

#### Paragraph 1

325. A proposal was submitted to the Working Group to replace the text of the *chapeau* and subparagraph (b) (i) of the provision and to insert a new subparagraph (b) (i) *bis* (see A/C.6/54/WG.1/CRP.13), to strengthen the preventative aspect of article 17.

326. Concerning the *chapeau* of the text under consideration, it was suggested that the word "their" before "financial institutions" be deleted so as to include other financial institutions functioning on the territory of the State Party.

327. It was also proposed to add the term "available" after the phrase "most efficient measures" contained in the *chapeau*, so as to recognize the actual means at the disposal of States in that regard.

328. In relation to subparagraph (b) (i), the view was expressed that the phrase "including anonymous accounts or accounts under obviously fictitious names" be deleted as being superfluous.

329. Furthermore, it was pointed out that while subparagraph (b) (i) was based on recommendation 10 of the Financial Action Task Force on Money Laundering (FATF), it did not conform entirely with the formulation in that recommendation, which included a reference to "law", "regulations" and "agreements". Only a reference to "regulations" was to be found in the subparagraph. Hence, it was proposed that the phrase "or other appropriate measures" be added after "regulations", so as to provide a

wider range of options to States Parties. In response, it was noted that the matter was covered by the word "including" in the *chapeau* to article 1. While a further proposal was made to add a reference to "appropriate" before "measures" in subparagraph (c), so as to add even more flexibility to the text, it was noted that the reference to "[t]aking all practicable measures" in the *chapeau* to paragraph 1 already provided sufficient flexibility.

330. Furthermore, the question was raised whether exchange bureaux were covered by the reference to "financial institutions" in subparagraph 1 (b), or "money-transmission agencies" in subparagraph 1 (c).

331. The view was further expressed that it should be made clearer that subparagraphs (c) and (d) were not mandatory.

**Paragraph 2**

332. In regard to subparagraph (b) (i), it was proposed to replace the phrase "suspected of being" with "in respect of whom reasonable suspicion exists that they are", so as to insert a reasonableness element with a view to preventing abuse of the provision which could negatively affect the rights of innocent individuals.

**Consideration on the basis of the revised texts of articles 5, 7, 8, 12 and 17, prepared by the Friends of the Chairman (A/C.6/54/WG.1/CRP.15)**

333. Following the discussion in the Working Group on the basis of the text prepared by the Bureau of the Ad Hoc Committee (contained in A/54/37, annex I.A), the Friends of the Chairman prepared a revised text for article 17 (see A/C.6/54/WG.1/CRP.15).

334. In introducing the revised text, the Chairman noted that no substantial changes had been made. It was observed that, in paragraph 1, subparagraph (b), the word "their", in the first line of the *chapeau*, had been deleted, in the absence of objections by delegations to that suggestion. Furthermore, the term "available" was added after the phrase "efficient measures". In regard to subparagraph (b) (i), the expression "including anonymous accounts or accounts under obviously fictitious names" was deleted in view of the unchallenged explanation that the preceding phrase "unidentified or unidentifiable" could apply to a variety of situations, which were to be looked at on a case by case basis, including those referred to in the deleted expression.

335. As to paragraph 2, subparagraph (b) (i), the phrase "in respect of whom reasonable suspicion exists that they are" was introduced to replace the words "suspected of being", so as to raise the threshold of the cooperation required.

336. The Chairman also drew the attention of the Working Group to the proposal on reporting suspicious transactions, contained in document A/C.6/54/WG.1/CRP.13.

**Paragraph 1**

337. During the ensuing debate on the revised text prepared by the Friends of the Chairman, concern was expressed regarding the use of the phrase "practicable measures" in the *chapeau*.

338. With regard to paragraph 1, the proposal was made to add a new subparagraph (a) *bis*, in line with the proposal contained in document A/AC.252/1999/WP.32, which dealt with measures to prohibit access into the territories of States. While support was expressed for the inclusion of such a provision, the observation was made that subparagraph (a) was sufficient to cover the activities that were intended to be covered by the proposed subparagraph (a) *bis*. Furthermore, the remark was made that the proposed new subparagraph could have implications for the rights of refugees under humanitarian law. Similarly, it was noted that a blanket prohibition on the entry into the territories of States may actually impede law enforcement activities. Furthermore, the view was expressed that such a provision could contradict the requirement that States either try or extradite individuals in their custody. The following proposals were made, by way of compromise: to delete the word "illegal" before "activities" in subparagraph (a), or to add the phrase "and prohibiting access into their territories of such persons" to the end of subparagraph (a).

339. In regard to subparagraph (b), the proposal contained in document A/C.6/54/WG.1/CRP.13, to include additional elements in the *chapeau* of subparagraph (b) and in subparagraph (b) (i), was reiterated. It was pointed out that the proposal was consistent with the recommendations of the FATF. While support was expressed for the proposal, concern was expressed that it actually went further than those recommendations, and that subparagraph (b) (i) was sufficient.

340. The proposal in document A/C.6/54/WG.1/CRP.13 also contained the text of a new subparagraph (b) (ii) *bis*, imposing a reporting obligation on States. The view was expressed that while the proposal was acceptable, the phrase "unusual or suspicious transaction" could be replaced. In that regard, a proposal was made to replace the phrase with "transaction exceeding a certain amount".

341. With regard to subparagraph (c), a preference was expressed for deleting the reference to "and licensing", as it went beyond what was required by the FATF recommendations. That suggestion was opposed in the Working Group, on the grounds that the reference was needed to counter the legitimization of shadow banking systems.

**Paragraph 2**

342. With regard to subparagraph (b) (ii), the suggestion was made to delete the phrase "or property", since it was already captured within the definition of "funds".

343. A proposal was made to include a new subparagraph (c), providing for the exchange of information through the International Criminal Police Organization (Interpol) (see A/C.6/54/WG.1/CRP.22).

**Consideration on the basis of the revised texts of articles 5, 7, 8, 12 and 17, prepared by the Friends of the Chairman (A/C.6/54/WG.1/CRP.15/Rev.1)**

344. Following the discussion in the Working Group on the revised text in document A/C.6/54/WG.1/CRP.15, the Friends of the Chairman prepared a further revision, taking into account the suggestions made in the Working Group and various texts emanating from informal consultations. The new text was contained in document A/C.6/54/WG.1/CRP.15/Rev.1, and was introduced at the seventh meeting, on 4 October 1999. At that meeting, the Chairman outlined the various modifications made to the text, which were agreed upon in the informal consultations.

345. The new *chapeau* of paragraph 1 combined the opening sentence of the article, together with the former *chapeau* of article 1 (in A/C.6/54/WG.1/CRP.15). The word "including", found both after "article 2" and after "taking all practicable measures", was deleted. The words "if necessary", found before the phrase "adapting their domestic legislation", where moved to after that phrase so as to improve the drafting.

346. It was observed further that the text that had emerged from the informal consultations retained the term "illegal" before "activities", in subparagraph (a).

347. Concerning the *chapeau* to paragraph 1, subparagraph (b), the words "and to report unusual or suspicious transactions" were added at the end of the first sentence. The word "Parties" was also inserted after the word "State" at the end of the *chapeau*.

348. As regards subparagraph (b) (i), the phrase "and measures to ensure that such institutions verify the identity of the real owners of such transactions" was inserted at the end. No change was made to subparagraph (b) (ii). Subparagraph (b) (ii) *bis* was a new provision which emerged from negotiations in the informal consultations, and contained elements of document A/C.6/54/WG.1/CRP.13. No change was made to subparagraph (b) (iii).

349. As regards subparagraph (c), it was observed that the paragraph had been altered by the addition of "[c]onsidering" at the beginning. Furthermore, the phrase "including, for example, the licensing" was added after "supervision".

350. In subparagraph (d), the word "[c]onsidering" had been added at the beginning, the term "implementation" was changed to "implementing", and "transport" was replaced with "transportation".

351. The Chairman noted that, while the Friends of the Chairman had reproduced the text as proposed by the coordinator of the informal consultations, several drafting modifications were necessary. A suggestion was also made to place subparagraphs (c) and (d) into a new paragraph 1 *bis*.

352. As to the *chapeau* of paragraph 2, the words "States Parties shall further cooperate in the prevention of the offences set forth in article 2 by" were inserted. No changes were made to subparagraphs (a) and (b).

353. A new paragraph 3 was added, on the basis of the proposal in document A/C.6/54/WG.1/CRP.22. It was explained that the Friends of the Chairman had decided to make it a new paragraph, instead of a subparagraph to paragraph 2, because its formulation was not in line with the *chapeau* to paragraph 2.

354. During the ensuing debate, the coordinator of the informal consultations noted, *inter alia*, that the phrase "measures to ensure" in paragraph 1, subparagraph (b) (i), was included so as to ensure consistency with FATF regulations. It was observed further that it was agreed in the informal consultations that subparagraphs (c) and (d) to paragraph 1 were permissive in nature. Hence, the suggestion to move them into their own paragraph 1 *bis* was supported.

**Paragraph 1**

355. In relation to the *chapeau*, a suggestion was made to revert back to the language of document A/C.6/54/WG.1/CRP.15, whereby the phrase "including, if necessary, "would be inserted after "measures". In terms of

a further suggestion, the phrase ", *inter alia*," would be inserted after "practicable measures".

356. In regard to subparagraph (b), it was observed that linking the phrase "and other professions" with "financial institutions" was inelegant. Thus, it was proposed to replace "and other professions" with "including other professions involved in financial transactions", in parentheses.

357. In regard to new subparagraph (b) (ii) *bis*, it was suggested that the term "unusual" be replaced with "unusually". This was opposed in the Working Group on the grounds that it changed the substantive meaning of the provision and was not the term used in the FATF regulations.

358. In terms of a further suggestion, the word "visible" could be replaced with "obviously".

359. Concerns were expressed regarding the reference to "reporting" suspicions in the last line, on the grounds that it went further than what was required by the FATF regulations. Thus, it was proposed to replace the word "report" with the idea of paying special attention to. That proposal was opposed in the Working Group on the basis that the text reflected FATF recommendation 16. It was also observed that article 17 did not attempt to reproduce all the FATF recommendations but that it contained amalgamations of some of the recommendations.

#### Paragraph 2

360. A suggestion was made to delete the word "property" since it was already covered by the definition of "funds".

### Consideration on the basis of the revised texts of articles 5, 7, 8, 12 and 17, prepared by the Friends of the Chairman (A/C.6/54/WG.1/CRP.15/Rev.2)

361. Following the discussion in the Working Group on the revised text in document A/C.6/54/WG.1/CRP.15/Rev.1, the Friends of the Chairman prepared a further revision, taking into account the suggestions made in the Working Group. The new text was contained in document A/C.6/54/WG.1/CRP.15/Rev.2 and was introduced at the 8th meeting, on 5 October 1999.

362. At that meeting, it was pointed out that the words ", *inter alia*, by" had been inserted in the *chapeau* of paragraph 1 before "adapting their domestic legislation", in view of the general support for that modification in the Working Group.

363. With regard to paragraph 1, subparagraph (b), it was explained that the phrase "other professions" had been retained, since it was based on the FATF recommendations. Concerning subparagraph (b) (ii) *bis*, the word "visible" was replaced with "obviously". The question of replacing the word "report" with "paying special attention to" was still the subject of informal consultations.

364. Following the decision at the previous meeting to move subparagraphs (c) and (d) out of paragraph 1, a new paragraph 2 was created to include those subparagraphs, as subparagraphs (a) and (b). A new *chapeau* was added, along the lines of the *chapeau* in paragraph 1. The word "implementing" was deleted from former paragraph 1, subparagraph (d) (now paragraph 2, subparagraph (b)), so as to adjust the text to the new *chapeau*.

365. As a result of the insertion of a new paragraph 2, former paragraphs 2 and 3 were renumbered as paragraphs 3 and 4. In new paragraph 3, subparagraph (b) (ii), the word "property" was deleted.

#### Paragraph 1

366. A suggestion was made to insert the phrase "to pay special attention to" after "accounts are opened, and" in the *chapeau* of subparagraph (b), so as to align the text with FATF recommendation 14. A suggestion was also made to replace the word "report" in the fourth line with "if the financial institution suspects that funds stem from criminal activity, it shall report", by way of compromise.

367. In relation to subparagraph (b) (ii) *bis*, a suggestion was made to add the word "or" between "unusual" and "large".

368. Concern was expressed that the reporting procedure in subparagraph (b) (ii) *bis* could conflict with the bank secrecy principle. In response, the observation was made that the language in the text was based on FATF recommendation 14.

### Consideration on the basis of the revised texts of articles 5, 7, 8, 12 and 17, prepared by the Friends of the Chairman (A/C.6/54/WG.1/CRP.15/Rev.3)

369. Following the discussion in the Working Group on the revised text in document A/C.6/54/WG.1/CRP.15/Rev.2, the Friends of the Chairman prepared a further revision taking into account the suggestions made in the Working Group. The new text was contained in document A/C.6/54/WG.1/CRP.15/Rev.3 and was introduced at the ninth meeting, on 6 October 1999.

370. At that meeting, an amendment to the *chapeau* of paragraph 1, subparagraph (b), was introduced orally. The words "and to report unusual or suspicious transactions" were to be replaced with ", and to pay special attention to

unusual or suspicious transactions and report transactions suspected of stemming from a criminal activity".

371. Furthermore, the word "such" was deleted from the beginning of paragraph 4.

372. No further suggestions on article 17 were made during the consideration in the Working Group of document A/C.6/54/WG.1/CRP.15/Rev.3.

*Notes*

[1] *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 37* (A/54/37), annex I B.

[2] Ibid., annex I A.

[3] Ibid., annex III.

[4] *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 37* (A/54/37).

[5] Ibid., annex II.

[6] See ibid., annex I A.